

Re The Network Rail (Essex and Others Level Crossing Reduction) Order

CLOSING SUBMISSIONS ON BEHALF OF THE RAMBLERS

Introduction

1. Through the proposed Network Rail (Essex and Others Level Crossing Reduction) Order (the “Order”), Network Rail has sought to close or downgrade the status of certain rights of way over 59 level crossings spread out across its network in Essex, Hertfordshire, Havering, Thurrock and Southend-on-Sea. It seeks permission to carry out works for the removal of the crossings, as well as *inter alia* authorisation for the creation of new rights of way and for the acquisition of land and rights over third party land which will be necessary for the crossing closures and the provision of alternative routes.
2. The Ramblers are a national organisation which is known for their particular expertise in protecting and maintaining the public rights of way (“ROW”) network. They have objected to the Order on a number of grounds.

Overview of the Ramblers’ objections

3. The Ramblers have objected to the Order on the basis that:
 - (a) Network Rail’s use of a Transport and Works Act order (“TWAo”) is unlawful;
 - (b) Further, and in the alternative, Network Rail’s “strategic case” for closure of level crossings through this Order is flawed; and,
 - (c) Without prejudice to the Ramblers’ position under (a) and (b) above, that a number of the proposed level crossing closures are unsatisfactory.

4. These submissions will proceed to address these matters in the following order:

SECTION 1: LEGAL MATTERS

- Inappropriate use of the TWA
- Section 13(2) of the TWA
- Section 5(6) test and its relevance to this Order

SECTION 2: BACKGROUND TO THE ORDER

- Inappropriate scale
- The risk of setting a precedent

SECTION 3: OBJECTIONS TO NETWORK RAIL’S “STRATEGIC CASE”

- A flawed strategy
- Lack of details

SECTION 4: INADEQUACIES OF NETWORK RAIL’S EVIDENCE

- Lack of clarity on Network Rail’s case
- Inaccuracies in Network Rail’s evidence
- Insufficient information on usage
- Insufficient assessment of the routes
- Flaws in Mott MacDonald’s RSAs
- Flaws in Mott MacDonald’s approach to road safety
- Diversity Impact Assessments
- Planning policy

SECTION 5: CROSSING-SPECIFIC OBJECTIONS

SECTION 6: CONCLUSION

SECTION 1: LEGAL MATTERS

Inappropriate use of the TWA

5. Prior to the start of the Inquiry, the Ramblers made legal submissions (“Legal Submissions”) that the use of a TWAO is unlawful in these circumstances because it will frustrate the legislative scheme established through Part II of the TWA which was specifically designed to regulate the closure of level crossings.
6. The detail of these submissions will not be unduly repeated here. In short, the Ramblers have argued that Network Rail, through seeking this Order, is attempting to bypass the specific, and carefully balanced, statutory scheme that was designed (by the TWA itself) to accommodate closure of level crossings. Having particular regard to the statutory intention behind the TWA, it is clear that Network Rail’s proposed use of the TWA for this scheme would frustrate the statutory purpose behind ss118A and 119A of the Highways Act 1980 (“HA 1980”).¹
7. As noted at paragraph 18 of the Legal Submissions, were Network Rail to be correct in their use of the TWA in this case, there is a real risk that these statutory provisions (ss118A and 119A of the HA 1980) will be rendered defunct. Network Rail could always avoid having to meet the carefully worded statutory tests in ss118A and 119A² by simply asserting that closing a level crossing will assist generally in reducing ongoing maintenance costs and reducing operational constraints on the network.
8. For the reasons given in the Legal Submissions, the various provisions of the HA 1980 more than adequately provide statutory powers to allow Network Rail to achieve the aims of this Order,³ as well as ensuring the necessary statutory protections are in place to allow for a fair and balanced outcome.⁴

¹ Ramblers’ Legal Submissions at [16].

² Namely, whether an extinguishment or diversion is “expedient to do so having regard to all the circumstances” having had regard to all the circumstances including *inter alia* “whether it is reasonably practicable to make the crossing safe for use by the public” (see section 118A(4) and 119A(4)).

³ See Legal Submissions at [17]-[22].

⁴ Legal Submissions at [9] and [23].

9. Notably, a number of the procedural issues surrounding this Order, including what the Ramblers consider to be the inappropriate scale of the proposals being pursued in one go (see further submissions below), clearly support the Ramblers' position that this is not a lawful use of the TWA. From the collective experience at this Inquiry, it is quite apparent that this is not how the TWA was designed to work.

Section 13(2) of the TWA

10. Furthermore, the Ramblers reiterate their alternative submission that the Order should be refused under section 13(2) of the TWA due to the fact that the objects of the Order "could be achieved by other means".⁵

11. Section 13(2) provides, in relevant part:

...Where an application has been made to the Secretary of State under section 6 above and he considers that any of the objects of the order applied for could be achieved by other means, he may on that ground determine not to make the order...

12. As noted in the Ramblers' legal submissions,⁶ when promoting this subsection the Minister stated (in response to a question from the floor as to what the phrase "other means" referred to):

That point was raised in Committee. Concern was expressed about a possible flood of applications dealing with matters for which procedures already exist. In particular, some Members feared that unscrupulous applicants might seek to use the new orders to sidestep the established procedure for extinguishing rights of way, where such a proposal was not related to a works matter that belonged to the new procedure. (Emphasis added.)

13. The same concern is evident in the TWA guidance, *A Guide to TWA Procedures*, at 1.14:

...the following matters are unlikely to be approved in TWA orders on policy grounds, unless compelling reasons can be shown:

...

Proposals which could more properly be dealt with under other existing statutory procedures – for example the closure of an inland waterway or public right of way

⁵ This argument is put forward in the alternative to, and without prejudice to, the Ramblers' overarching position that the use of the TWA is unlawful as noted above.

⁶ Ramblers' Legal Submissions at [26]-[32].

where no associated new works requiring a TWA order are proposed. (Emphasis added.)

14. Clearly, and for the reasons which are set out in more detail in the Legal Submissions, section 13(2) was specifically intended to prevent the TWA process from being used to close public rights of way where there is no related works matter. It cannot be argued by Network Rail that there is, in reality, any “related works matter” underlying this Order. The closure and diversion of the public rights of way *are* the alleged “works matter”. The Ramblers, therefore, respectfully request that the Order be refused under section 13(2). Refusing the Order on this ground would also avoid the need to determine whether or not use of the TWA process for this Order is lawful.

Section 5(6) test and its relevance to this Order

Application and relevance of the section 5(6) test

15. Before moving on to consider issues with Network Rail’s “strategic case” in more detail, the Ramblers seek to clarify, at the outset, what test should be applied to this Order.⁷
16. The Order is promoted under sections 1 and 5 of the TWA. In determining whether or not a TWAO should be made under section 1 of the TWA, a very wide discretion has been afforded to the Secretary of State:
- (1) The Secretary of State may make an order relating to, or to matters ancillary to, the construction or operation of a transport system of any of the following kinds, so far as it is in England and Wales...
 - (a) a railway...(Emphasis added.)
17. The question for the Secretary of State under section 1 is simply: whether or not the case for the Order has been justified and whether or not the Secretary of State, therefore, considers that the Order should be made.

⁷ These submissions, and the submissions that follow, are made without prejudice to the Ramblers’ primary position that the use of a TWA for this Order is inappropriate and unlawful.

18. The exercise of this general discretion, to determine whether or not the Order should be made, is entirely distinct from the test set out in section 5(6) of the TWA.

19. Section 5(6) states:

- (6) An order under section 1 or 3 above shall not extinguish any public right of way over land unless the Secretary of State is satisfied-
- (a) that an alternative right of way has been or will be provided, or
- (b) that the provision of an alternative right of way is not required.

20. The *Guide to TWA Procedures* states, in Annex II on p. 105:

If an alternative is to be provided, the Secretary of State would wish to be satisfied that it will be a convenient and suitable replacement for existing users.

21. Section 5(6) merely sets out a condition precedent that must be satisfied in the event that any public ROW is to be extinguished by any TWAO. Crucially, this assumes that the TWAO, itself, has already been justified under section 1. Section 5(6) provides a test for when a public ROW *can* be extinguished. It does not set out a test for when a public ROW *should* be extinguished.⁸ In other words, section 5(6) “restricts” what any TWAO can do to a public ROW, but it assumes that the need for the TWAO has been justified on its own merits.

22. The complicating factor in this Order, arises through the way in which Network Rail has framed its “strategic case” for closure of level crossings. According to Network Rail’s strategic case, the justification for being able to close a level crossing (i.e. the justification for the proposals in this Order) appears to depend entirely on there being a “suitable and convenient” alternative route so as to comply with the section 5(6) test. In this way, Network Rail’s underlying rationale for the Order – which considers

⁸ The fact that section 5(6) is merely a condition precedent (or, in other words, a “bolt on” protection for ROWs affected by TWAOs) is evident by the sentences preceding the above-quoted section of the *Guide to TWA Procedures* (See also Network Rail’s note on ‘Section 5(6) TWA 1992 – “required”’ (NR-164) at [10] where this part of the guidance is quoted) which states:

The power to extinguish a public right of way is however restricted by section 5(6). This provides that a section 1 or 3 order shall not extinguish a public right of way over land unless the Secretary of State is satisfied that an alternative right of way has been or will be provided, or that one is not required. If an alternative is to be provided, the Secretary of State would wish to be satisfied that it will be a convenient and suitable replacement for existing users. (Emphasis added.)

whether or not *level crossings* “should” be closed⁹ – is applying the same wording and concepts as the section 5(6) test – which simply determines whether or not *public rights of way* “can” be closed.

23. The distinction between the section 1 test and the section 5(6) test is crucial to a proper assessment of Network Rail’s proposed Order. There should be no assumption that a proposed level crossing closure has been justified simply on the basis that the test in section 5(6) of the TWA has been met. If that is a proposition which Network Rail seeks to make, then Network Rail will need to show why that is an appropriate assumption to make.¹⁰

24. Interestingly, whilst the section 5(6) test¹¹ became a key focus of this Inquiry, often being referred to as “the” test to be applied to the individual crossing proposals, there was, in fact, no specific reference to section 5(6) in Network Rail’s statement of case (NR26). If Network Rail had considered it to be “the” test then the Ramblers would have expected Network Rail to have made this clear from the outset. With respect, the increasing importance, or centrality, of the section 5(6) test only became apparent as the Inquiry process evolved throughout the year.

25. Ironically perhaps, it was the Ramblers who made specific reference to the section 5(6) test in their statement of case.¹² However, the intention here was to highlight that the test set a bare minimum level of protection for any ROW affected by a TWAO.¹³ That is quite different to the section 5(6) test being used as the determining factor in deciding whether or not a level crossing should be closed. Having heard Network Rail’s strategic evidence, and for the reasons given below, the Ramblers do not consider that Network

⁹ Or, in other words, why the Order should be granted under section 1 of the TWA,

¹⁰ Network Rail stated in its Opening Statement at this Inquiry, at paragraph 43:

As identified at the Pre-Inquiry Meeting, the main (indeed, sole) issue which falls to be considered in respect of the individual crossings is that set out in s.5(6) of the TWA 1992...

It is not accepted by the Ramblers that compliance with the section 5(6) test is the “sole issue” that falls to be considered in respect of the individual crossings. The need to close those level crossings in the first place must first be established.

¹¹ And its shorthand reference: namely, whether or not there is a “suitable and convenient replacement right of way/route for existing users”.

¹² See the Ramblers Statement of Case, sections 5 on “Legal considerations” and section 6 on “Government guidance”

¹³ Similarly, each of the Ramblers’ proofs of evidence refer to the section 5(6) test; again, as setting out the minimum requirements that must be met if a ROW is to be extinguishment or diverted under a TWAO.

Rail's "strategic case" for closure, including its over-reliance on the section 5(6) test, provides a sufficiently robust case for closing a level crossing.

Scope of the section 5(6) test

26. If the Inspector were to be satisfied (contrary to the Ramblers' submissions above) that simply meeting the section 5(6) test *is* a sufficient basis on which to justify the closure of a level crossing, then the Ramblers would sincerely caution against a restrictive interpretation of that test's scope.
27. There are outstanding disagreements between Network Rail and the Ramblers as to the parameters of section 5(6)¹⁴ namely, as regards the extent to which the section 5(6) test:
- (i) encompasses a comparative assessment between the existing route and the proposed diversion;
 - (ii) involves a consideration of the "quality" of the route or the public enjoyment of the route; and,
 - (iii) covers certain groups within the term "existing users" (most notably, whether this term includes all those categories of users who have a legal right to use the ROW).
28. Network Rail has also submitted a note entitled '*Section 5(6) TWA 1992 – "required"*',¹⁵ in which it seeks to explain its approach to the meaning of "required" in the section 5(6) test.
29. Unfortunately, through the course of this Inquiry, the question of how to interpret section 5(6) has become extremely technical and overly legalised.
30. Ultimately, the Ramblers submit that the underlying issue is really quite simple. The Inspector needs to ask himself: what is the standard that an alternative route must meet in order for it to justify the closure and diversion of a ROW over a level crossing.¹⁶

¹⁴ See the "Note as to meaning of Suitable and Convenient with extracts from Oxford English Dictionary" (NR-135).

¹⁵ NR-164.

¹⁶ This is in a context in which the specific characteristics of that level crossing – such as how relatively safe it is (by reference to its ALCRM score), how relatively costly it is to manage, or the extent to which it is specifically impacting on future enhancement/efficiency schemes on the network – are not being relied on as the justification

Clearly, here the comparative enjoyment of the alternative route vis-à-vis the existing route will be an important consideration.

31. Unlike a run-of-the-mill TWAO, section 5(6) is not being applied in its usual way. It is being used as the *justification* for closure of a level crossing. According to Network Rail, if section 5(6) has been met, then its Order proposal for a particular level crossing has been justified under section 1 of the TWA, having regard to the general issues associated with all level crossings. In the context of this particular Order, the section 5(6) test should be interpreted broadly, in the manner advocated for by the Ramblers.
32. In case there is any concern that the adoption of a broad interpretation of the scope of section 5(6) may set a precedent for all future TWAOs affecting ROWs, it is open to the Inspector and the Secretary of State to make clear in any recommendation/decision that the section 5(6) test has been applied in a broad manner due to the very specific, and novel, role which it has played as a fundamental part of Network Rail's "strategic case" for the justification of this Order under section 1.

SECTION 2: BACKGROUND TO THE ORDER

33. At the outset of this Inquiry, the Ramblers highlighted that this Order must be assessed in context. And, its context is unique.
34. Network Rail is pursuing the Order as part of its overarching Anglia CP5 Level Crossing Reduction Strategy.¹⁷ This covers the whole Anglia network¹⁸ and the Order is being pursued simultaneously with two other TWAOs:
- (i) The Network Rail (Cambridgeshire Level Crossing Reduction) Order (the "Cambridgeshire Order"), which seeks to close or downgrade rights over 25 level crossings in the county of Cambridgeshire.

to close the crossing, but instead Network Rail is merely relying on the "strategic" benefits associated with the closure of any level crossing.

¹⁷ NR18.

¹⁸ Including the Essex region, Cambridgeshire, Suffolk and Norfolk.

- (ii) The Network Rail (Suffolk Level Crossing Reduction) Order (the “Suffolk Order”), which proposes to close or downgrade 23 level crossings on the mainline branches across the county of Suffolk.

35. Through these three orders, Network Rail seeks to close over 100 level crossings and it seeks to do so across entire counties. In light of this, it is crucial that this Order is not assessed in isolation. It forms part of a much bigger picture.

Inappropriate scale

36. The scale of the Order, in terms of how many level crossings will be closed in one go, is clearly unprecedented. The novelty of the Order was accepted by Network Rail¹⁹ and it is an element of this scheme which is of serious concern to the Ramblers.

37. When public rights of way are diverted or extinguished under Part VIII of the Highway Act 1980 - whether under the specific provisions related to level crossing closure (ss118A or 119A) or the more generic provisions of ss116, 118 or 119 – one proposal²⁰ will usually have its own public path order, its own consultation process and its own assessment by local people and the highway authority. This is in stark contrast to Network Rail’s use of the TWA procedure for this Order, where so many, entirely unrelated, public ROWs will be affected in one go.

38. What is more, serious issues associated with the Order’s scale have become evident through the Inquiry process. To begin with, the reason the Inquiry had to abruptly adjourn after only three days of sitting in October 2017 was due to a widespread failure, on Network Rail’s behalf, to serve the requisite statutory notices on a significant number of land interests (30 interests in over 45 plots of land, involving around 17 level crossings).²¹ Such a large-scale failing is only possible because of the inappropriate

¹⁹ Mr Brunnen accepted in XX by the Ramblers that this was the first time that Network Rail was taking this approach and seeking to close level crossings on such a large scale in one go.

²⁰ More than one right of way can be included in a public path order under ss118 and 119, but they will usually be factually related.

²¹ This not only affected the Essex Order, but resulted in Network Rail having to withdraw a number of level crossing proposals from the Cambridgeshire and Suffolk Order.

size of the proposed scheme. It was a strong warning bell that Network Rail has simply bitten off more than it can chew.²²

39. Furthermore, when the Inquiry resumed in September 2018, Network Rail noted that it had realised that there had been an issue with the location of various “P Points” on the Order plans that would affect a number of the proposals in the Order. The explanation for this was simply a “data error” (NR-105). This kind of error is concerning in a case where the exact locations of ROWs, marked by their P Points, is crucial.
40. The Ramblers note that both the proposals to close E42 Sandpit and E57 Wivenhoe were removed from the Order after the application was deposited. Having considered the reasons given for the decision to remove these crossings, it appears that the underlying reasons could have, and should have, been realised before the application was made so that objectors, such as the Ramblers, did not need to waste time and money considering and responding to these proposals.
41. More generally, the amount of documentation and evidence produced for this Inquiry is considerable to say the least. For the average objector or interested member of the public, it is a daunting task to try to comprehend Network Rail’s case for the closure of a particular level crossing that they are interested in. As Mr Bird, appearing on behalf of the Ramblers, put it, it is “extremely difficult to read all of this documentation”.²³ What is more, the evidence that has been provided has included a considerable number of errors, inaccuracies and information that has, with respect, been confusing at best and misleading at worst. These are dealt with in more detail below.
42. The inappropriate scale of what Network Rail is seeking to achieve through these orders has serious repercussions on a national organisation like the Ramblers who rely on volunteers and who have limited resources. The Inquiry itself has lasted over a year, with sitting days amounting to over 10 weeks. This should be considered alongside the Suffolk and Cambridgeshire Inquiries which both lasted in the region of 6-7 weeks.

²² When it was put to Mr Kenning in XX on strategic matters that the implementation of this scheme had, in practice, been an absolute nightmare for Network Rail, Mr Kenning’s response was “I won’t say we haven’t had our problems...”

²³ Mr Bird XIC for E30 and E31.

43. As noted in opening, whilst the Ramblers may be able to properly assess one or two proposed changes to the rights of way network, expecting it to scrutinise over 100 proposals over the same period of time, and to attend back-to-back lengthy Inquiries is simply unreasonable.
44. The inappropriate scale of this scheme will be a recurrent theme running through these closing submissions. It pervades the whole of Network Rail's case.²⁴

The risk of setting a precedent

45. In their opening statement,²⁵ the Ramblers highlighted the potential for this case, along with the other two proposed orders, to be a "test case" for Network Rail, submitting that, if the scheme is approved, there is a chance that Network Rail will roll out similar projects across the entire country. During the Inquiry, Network Rail did not dispute this. Indeed, in response to the point put in cross-examination, Mr Brunnen accepted that it is a possibility that the strategy could be adopted in other areas of the country.²⁶
46. The potential to set a precedent through this Order is particularly important because the Order does not simply rest on a proposal to close or downgrade 58 specific level crossings. It also relies on a "strategic case" that sets out Network Rail's justification for all the crossing closures and includes a standardised methodology for how to select which crossings will be closed without the provision of replacement crossing infrastructure, such as bridges or underpasses.
47. Were this "strategic case" to be approved and then applied in other areas of the country, there would appear to be nothing to stop it from being implemented on a much greater scale than has even been attempted in the Anglia network.
48. In light of this, the Ramblers wish to highlight that it is quite possible for the Inspector and the Secretary of State to form the view that some of the crossings contained in this Order should indeed be closed (having regard to their individual merits), but that the underlying method by which Network Rail chose them (through the application of its

²⁴ It also illustrates, in practice, that this Order is an inappropriate use of the TWA.

²⁵ Ramblers' Opening Statement, at paragraph 4.

²⁶ Mr Brunnen, XX by the Ramblers.

“strategic case”) was fundamentally flawed. It is open to the Inspector, were he to be minded to take this approach, to clearly specify in his report (and for the Secretary of state to reflect that in the decision letter) which aspects of Network Rail’s case he has based any of his recommendations for approval on and whether or not the recommendation for approval of specific crossing closures should also be read as an implicit approval of Network Rail’s underlying “strategic case”.

SECTION 3: OBJECTIONS TO NETWORK RAIL’S “STRATEGIC CASE”

49. For the reasons given below, the Inspector cannot be satisfied that Network Rail’s “strategic case” provides a sufficiently robust methodology for how level crossing closures should be determined.

1. A flawed strategy

The desire to close all level crossings

50. Network Rail has made it quite clear during this Inquiry that it would want to close all level crossings if that were possible.²⁷ It is also now clear that Network Rail are relying on three key “strategic” reasons to seek closure of level crossings:

- (i) to improve safety on Network Rail’s network;
- (ii) to reduce the ongoing costs associated with the maintenance of level crossings;
- and,
- (iii) to better enable operational efficiency improvements.²⁸

51. In relation to safety, Network Rail have emphasised that all level crossings have an inherent safety risk and that that risk can only be “eliminated” if the level crossing is closed.²⁹ This is clearly true and the Ramblers do not dispute it. It is also clear that closing a level crossing will inherently reduce the ongoing maintenance costs

²⁷ For example, in response to XX by Essex County Council, Dr Algaard said “I believe that every level crossing represent[s] a safety risk – so I would like to close all [of them] if I could – [I/we] recognise it is not possible because of [the] impact on local communit[ies]...”

²⁸ See, for example, Mr Brunnen’s proof of evidence at [2.3].

²⁹ For example, Mr Brunnen in XX by the Ramblers stated “the only way to extinguish the risk completely is to close the crossing”.

associated with it and that having fewer level crossings on the network, in general terms, can assist in improving operational efficiency.

52. However, Network Rail accepts that those three “strategic” reasons, taken alone, cannot justify the closure of a level crossing.³⁰ And, of course that must be so, otherwise all level crossings could be closed tomorrow without any further consideration. Network Rail accepts that there must be some kind of “balancing act”,³¹ through which the reasons in favour of closing level crossings can be weighed against the reasons for keeping the crossings open.
53. The need for such a balancing act arises naturally from the fact that level crossings represent an interface between the railway network and rights of access across land. Those rights of access may be utilised for a variety of different reasons – whether it be to access the wider public ROW network, connect to basic local services, access a farm or business, or reach a private residence. Each level crossing is “unique”³² and different competing interests will be engaged when considering the closure of each one.³³
54. Once it is accepted that a balancing exercise is required that factors in the wider community’s interest, as well as the interests of Network Rail, the crucial question then becomes: how did Network Rail carry out this balancing exercise in selecting which crossings to close (and how these should be closed³⁴) through this Order? The Ramblers do not consider that the wider community’s interests have been sufficiently weighed into the balancing exercise carried out by Network Rail.

Network Rail’s licence and statutory duties

55. Before moving on to consider how that balancing exercise, it is worth highlighting the limits of Network Rail’s duties under its licence conditions and other statutory regimes.

³⁰ Mr Kenning agreed in XX by the Ramblers on strategic matters that Network Rail must also balance in the wider community’s interest, in addition to considering these three strategic benefits in favour of closure.

³¹ Both Mr Brunnen and Dr Algaard agreed in XX by the Ramblers that such a balancing act must be carried out.

³² Mr Brunnen in XX by the Ramblers stated “each crossing is unique”.

³³ As will have been readily apparent from the course of this Inquiry.

³⁴ I.e. should this be by way of diversion, by way of further safety mitigation measures such as miniature stop lights or by way of new infrastructure (such as a bridge or underpass) to replace the crossing point with a grade-separated crossing.

56. Mr Brunnen’s proof of evidence sets out, in some detail, Network Rail’s regulated functions under its licence (section 4) and the wider policy context under which Network Rail operates (section 5). Mr Brunnen cited to a number of different statutory and regulatory duties applying to Network Rail, including Network Rail’s Operating Licence under the Railways Act 1993, the government’s National Policy Statement for National Networks 2014 (“NPSNN”), the Rail Safety Directive 2004 and documents produced by the Office of Rail and Road (“ORR”), Network Rail’s regulator.

57. These duties require Network Rail to operate a safe and efficient railway. However, crucially in cross-examination Mr Brunnen accepted that Network Rail’s operating licence imposed no absolute duty on Network Rail, but rather a qualified duty: “*The licence holder shall achieve the purpose in condition 1.1. to the greatest extent reasonably practicable having regard to all relevant circumstances...*”.³⁵

58. Indeed, similarly qualified wording can be seen in the NPSNN³⁶ and the Rail Safety Directive 2004.³⁷ Therefore, whilst Network Rail must ensure a minimum standard of safety on its network, there is no absolute duty on it to provide a network that is “as safe as possible”. Nor, is Network Rail under any duty to improve operational efficiency beyond what is “reasonably practicable”. To summarise, Network Rail’s duties are always qualified.

59. What is more, whilst the ORR has published a number of documents that emphasise the need to close level crossings and for Network Rail to consider crossing closure as the first option, again the requirements are qualified, not absolute. For example, the ORR’s “Periodic Review 2013” (extracts in NR15) states that “*Network Rail must continue to meet its legal safety obligations, improving safety where reasonably practicable.*”³⁸ The ORR’s “Strategy for regulation of health and safety risks – 4: Level

³⁵ See sub-paragraph 1.2 of paragraph A1 of Network Rail’s Licence, quoted at [4.9] of Mr Brunnen’s proof of evidence (emphasis added).

³⁶ See at [3.12] of the NNNPS, quoted at [5.4] of Mr Brunnen’s proof, which states that “[i]t is the Government’s policy, supported by legislation, to ensure that the risks of passenger and workforce accidents are reduced so far as reasonably practicable...” (emphasis added).

³⁷ Article 4(1) of the Rail Safety Directive 2004, quoted at [5.5] of Mr Brunnen’s proof of evidence states “*Member States shall ensure that railway safety is generally maintained and, where reasonably practicable, continuously improved*” (emphasis added).

³⁸ Para 35 of the Periodic Review 2013: Final determination of Network Rail’s outputs and funding for 2014-19, quoted at [5.9] of Mr Brunnen’s proof of evidence.

crossings” (NR14) makes clear that whilst crossing closure is encouraged and should always be considered first in any risk assessment, ultimately:

*The closure of level crossings requires attention to many factors, including the practicalities of replacing them with bridges or underpasses, the legal arrangements for closing rights of way, the need to minimise the possible transfer of risk to other crossings, and the possibilities of importing new dangers such as increasing the likelihood of trespass.*³⁹

60. Furthermore, prior to the Inquiry resuming in September 2018, Network Rail submitted further documentation to demonstrate ORR’s support for the project underlying this Order. However, even that support is documented in qualified terms and only where this can be “reasonably achieved” and “taking into account local opinions and amenity”.⁴⁰

61. A review of the statutory and policy context is important because it makes clear that Network Rail has devised its own strategy for determining which level crossings to close and how. As Mr Brunnen put it, during cross-examination, Network Rail has created their own new strategy - it is the first time we have adopted this approach to close LC.⁴¹ It is this new approach that needs to be properly scrutinised.

“A fresh approach”

62. The key document for determining how Network Rail chose which crossings to close in this Order is the Anglia CP5 Level Crossing Reduction Strategy (NR18).⁴² This document was written by Mr Kenning and approved by Dr Algaard who represented the “client” for the work.⁴³ It was prepared for the whole Anglia region, with individual Route Requirement Documents (“RRDs”) having been provided for specific parts of the Anglia Route.⁴⁴

³⁹ NR14 at paragraph 6.

⁴⁰ See appendices to Dr Algaard’s supplementary proof, tab 2, appendix 3, letter dated 11 July 2017.

⁴¹ Mr Brunnen XX by the Ramblers.

⁴² Mr Kenning agreed in XX by the Ramblers on strategic matters that NR18 underlies this Order.

⁴³ Dr Algaard agreed in cross-examination by the Ramblers that she was familiar with this strategy, that she was the client for the Order and agreed to the scope of the works/made the key decisions.

⁴⁴ The Essex & Hertfordshire RRD is appended to Mr Kenning’s Proof of Evidence, Tab 1. RRDs for Thurrock and Havering were not included, although upon request by the Ramblers the Thurrock RRD was disclosed to the Inquiry (NR-116).

63. NR18 begins by setting out the overarching purpose behind the strategy (NR18,p. 5):

The Network Rail company view is that as many level crossings should be removed from the network as practicably possible and the purpose of this CRD is to set out the CP5 level crossing reduction strategy for the Anglia Route, to provide the high level thought process and show the framework to deliver further reductions in the numbers of level crossings.

The document then goes on to explain why Network Rail should attempt to use a TWAO to close level crossings (NR18, at [1.1.1]⁴⁵) and the general “decision-making” procedure (NR18, at [1.1.2]). The phases of the strategy are then set out (NR18, at [2.1.2]). Five distinct phases are described, with a further “no change” phase.

64. The first thing to note about NR18 is that it is clearly a document written by Network Rail for Network Rail, which takes as its starting point that all level crossings are a safety risk and should be removed where possible. Whilst Mr Kenning noted that it was written “in response to ORR”, he accepted that ORR had not directed him to write it and ultimately did agree that it was written from a Network Rail point of view.⁴⁶

65. For example, at [1.1.1], NR18 states:

The best way to close public highways is through a Transport and Works Act Order. In that way, all proposed changes and consents can be consulted in advance, bridges provided where appropriate, and we can argue using the greater public benefit of improved rail services.

It was put to Mr Kenning in cross-examination that the “best way” really meant the “best way for Network Rail”, which Mr Kenning did not seem to dispute.⁴⁷ Furthermore, it is concerning that the second sentence reads as implying that Network Rail are simply using the argument of “greater public benefit of improved rail services” to attempt to make the project fit within the TWA framework. Indeed, Mr Kenning stated that he could “see how you can read it as that” whilst nonetheless disputing that that was the case.

⁴⁵ See also NR18 at 2.1.1., “A Fresh Approach”.

⁴⁶ Mr Kenning XX by the Ramblers on strategic matters.

⁴⁷ During XX by the Ramblers on strategic matters, in response to this point, Mr Kenning stated “as I have said it is written from [a Network Rail] perspective...”.

66. There are further concerning statements made in NR18. For example, at [1.1.2] it is stated:

A little used crossing today can suddenly become a big problem when local circumstances change and the usage dramatically increases. This leads to closure objections and could lead to requiring the deployment of technology to manage the risk. Therefore it is important to start with the least used crossings and work up to the major crossings.

This clearly reads as Network Rail trying to get rid of the problem of level crossings by quickly shutting them so that it can avoid the need to maintain them for the future.

67. To clarify, the Ramblers are concerned with any indication of a “Network Rail-centred” approach because of what Network Rail is proposing. Network Rail is arguing that it has, itself, carried out the balancing act and considered all interests that may be affected by closure of a level crossing. As Mr Kenning put it in re-examination for E33, there is a balancing act at play here: “a balancing act in terms of [the] impact on landowner(s), impact on users, impact on Network Rail, impact on the Highway Authority” and that it was not just about considering the impacts on Network Rail. Yet, Network Rail has set itself up as the body responsible for carrying out that balancing exercise. They are presenting to the Inspector what they perceive to be proposals where they have got the balance right.

No clear test

68. One of the fundamental issues with NR18 is the uncertainty surrounding the decision-making procedure. It appears at [2.1.1] that a filtering process is established. The numbers of level crossings on a network are first rationalised – by closing level crossings either through extinguishing the ROWs or simply diverting them to alternative existing means of crossing the railway. Then Network Rail plans to install infrastructure (bridges or underpasses) to replace the remaining level crossings. Out of the five phases of the strategy, phases 1, 2 and 4 constitute the initial “rationalisation” stage and phases 3 and 5 will cover the stage to follow – when bridges or underpasses will be provided. This Order only covers phases 1, 2 and 4 (in other words, just the “rationalisation” stage). There is, of course, no guarantee that the later stage of

providing infrastructure will be carried out, so it is quite possible – were the Order to be made – that there would only be rationalisation.⁴⁸

69. The test for whether or not a crossing will fall within phases 1, 2 or 4 is far from clear and, with respect, it did not appear to be any clearer following cross examination of Mr Kenning.⁴⁹ As Mr Kenning put it in examination-in-chief on strategic matters, “phases 1 to 5 (or 6 if include no change)...are pretty “rough buckets””.
70. Firstly, it was highlighted during the Inquiry that a number of crossings had already been completely excluded from the strategy at the time NR18 was written and are contained in NR18 Appendix D. Mr Kenning explained that these crossings would have been excluded because, for example, they involved a significant road and it would not be feasible to divert it or build a bridge (referring, as an example, to a crossing in Stowmarket).
71. Secondly, it appears from NR18 that crossings will be extinguished where they are “clearly...unused or have extremely little use”.⁵⁰ It seems that what constitutes “extremely little use” is a determination for Network Rail to make, but there did not appear to be any clear parameters for how it would do so.
72. Thirdly, crossings would be closed, with diversions for the rights of access that exist across them, simply on the basis that this is a “nearby alternative route” which can utilise existing access points across the railway. This “nearby alternative route” test is crucial to Network Rail’s entire case. Unless a crossing falls into the (i) Appendix D category or the (ii) “clearly unused” category, the initial “short-listing” decision for determining if it would be taken forward as a proposal for closure in this stage of the project, rested on whether Network Rail thought there was a “nearby alternative route”.
73. It is clear from Mr Kenning’s proof of evidence that the determination of whether there was a “nearby alternative route” began as a desktop exercise.⁵¹ This resulted in around

⁴⁸ When this point was put to Mr Kenning in XX by the Ramblers on strategic matters, he fairly noted that he could not give a guarantee.

⁴⁹ The Ramblers submit that the wording of Phase 4 is particularly unclear.

⁵⁰ NR18 at 2.1.2.1 and 2.1.2.2.

⁵¹ See Mr Kenning’s proof of evidence at [3.9].

217 level crossings, from across the Anglia Network, being shortlisted for further consideration.

74. The Ramblers made clear, in their opening submissions, that this “initial “short-listing” decision was key”.⁵² Ultimately, the decision as to whether or not to close a level crossing (with no replacement infrastructure) rests on the basis of there being an alternative route nearby. That decision-making process does not consider who uses that crossing, how many people use that crossing,⁵³ or what they use it for. It does not consider the relative safety risks at that crossing⁵⁴ and weigh that against the use of the public rights that traverse it. It does not consider the safety risks at the crossing and weigh that against the safety risks of the alternative route (where that alternative involves walking alongside a road). It does not consider the various costs of different safety risk mitigation measures, such as miniature stop lights (“MSL”), barriers or a bridge, against the level of demand (or likely future level of demand) for the ROW across the crossing.

75. Ultimately, Mr Kenning had to agree⁵⁵ that, through the way this strategic methodology worked, it was possible for a level crossing to be included in the Order (or, in other words, proposed for closure via diversion) even where that level crossing had the following characteristics:

- (i) A low ALCRM score;
- (ii) No need of any upgrade in the next 10 years;
- (iii) No direct relationship to any enhancement scheme;
- (iv) High community value in terms of the level of usage; and,
- (v) The alternative route directed users of the level crossing to walk alongside a road that whilst deemed be “safe enough” for use by pedestrians was, in fact, more risky to users than the level crossing;

⁵² Ramblers Opening Statement at paragraph 13.

⁵³ Dr Algaard agreed during XX by the Ramblers that for purposes of drawing up the initial shortlist, Network Rail did not consider how many people used the route (“no, [we] just considered if there was an alternative route”).

⁵⁴ As is further noted below, Network Rail accepted that, whilst the All Level Crossing Risk Model scores (representing relative safety risks) were relevant as reduction in safety risk is one of the strategic reasons for closing level crossings, a level crossing was not chosen for inclusion in the Order based on its individual ALCRM score or Fatalities and Weighted Index score (see Mr Brunnen’s proof of evidence at [8.24]).

⁵⁵ Mr Kenning XX by the Ramblers on strategic matters.

Provided that Network Rail considers there to nonetheless be a suitable and convenient alternative route, this crossing could be selected for closure.

76. The Ramblers do not consider this to be a robust methodology for deciding whether or not close a level crossing. Each crossing should be considered by reference to its specific circumstances and how it is used by the population. It is inappropriate for Network Rail to apply such a blanket assessment of the case for closure by reference to whether or not there is an “alternative route nearby”.

77. In fact it is worth contrasting this new approach to what would need to be considered for a crossing extinguishment or diversion order under ss 118A or 119A of the HA 1980. For example, schedule 1 of the Rail Crossing Extinguishment and Diversion Orders Regulations 1993 requires that for a crossing diversion order under s119A,⁵⁶ reasons must be given for the proposed rail crossing diversion order⁵⁷ including specifically “information about”:

- I. The use currently made of the existing path, including numbers and types of users, and whether there are significant seasonal variations, giving the source for this information, together with details of any survey carried out (any circumstances preventing or inhibiting such use must also be mentioned);
- II. The risk to the public of continuing to use the present crossing, and the circumstances that have given rise to the need to make the proposed order;
- III. The effect of the extinguishment of the crossing and the creation of the proposed new path(s) or way(s) having regard to the convenience to users and the effect on any connecting rights of way and the network as a whole;
- IV. The opportunity for taking alternative action to remedy the problem such as a bridge or tunnel in place of the existing crossing or the carrying out of safety improvements to the existing crossing;
- V. The estimated cost of any practicable measures identified under (iv) above;
- VI. The barriers and/or signs that would need to be erected at the crossing and the points from which any path or way is to be extinguished or created, assuming the order is confirmed; and
- VII. The safety of the alternative right of way to be created by the order relative to the existing rail crossing.

78. It is interesting to note that a number of factors that the Ramblers consider to be pertinent in order to ensure a balanced approach to determining whether to close a level crossing by way of diversion are specifically referred to in this Schedule. For example,

⁵⁶ Similar considerations need to be considered, where applicable, for section 118A orders.

⁵⁷ See Schedule 1, form 2 for a s119A order, section (i).

there is a specific need to consider the “relative” safety of any alternative right of way compared to the existing level crossing (point VII), and there is a requirement to consider the opportunity to take alternative action, including considering the implementation of grade-separated infrastructure or further safety mitigation measures (point IV).

79. These factors are yet further examples of the carefully structured specific statutory scheme that is designed to accommodate the need to close level crossings. The fact that Network Rail is pursuing a scheme that avoids the need to fully consider these factors is a further indicator that this is an inappropriate use of the TWA.

Failure to adequately balance the wider community’s interests

Restrictions on Mott MacDonald’s brief

80. After shortlisting 217 proposals for crossing closures, Network Rail then contracted with Mott MacDonald to scrutinise the proposed alternative routes and determine if they were suitable and convenient. But Network Rail cannot rely on the involvement of Mott MacDonald to show that wider community interests have been sufficiently considered. Mott MacDonald was not asked to assess Network Rail’s underlying strategic case for closure of level crossings.⁵⁸ It was only contracted to review whether or not the proposed alternative routes were feasible and suitable replacements.

Restrictions on the scope of public consultation

81. In a similar vein, whilst there were two rounds of public consultation carried out on the project, it is readily apparent that the public were being consulted on whether there was a suitable and convenient replacement route available (and on their preference as to which of a number of options should be chosen for such routes). The public was not

⁵⁸ Mr Kenning agreed in XX by the Ramblers of strategic matters that at no stage in the tender work was Mott MacDonald asked to question the underlying case for closure and that if Mott MacDonald were to recommend that a level crossing be dropped from the project, it would be because the alternative route was considered inadequate. Ms Tilbrook agreed in XX that Mott MacDonald were not briefed to question or dispute the underlying strategic case for closure and that their work only focussed on the diversionary routes.

being consulted on whether a level crossing should be closed at all.⁵⁹ As Mr Goffee, on behalf of the Ramblers, put it in his proof of evidence for E05 Fullers End, at paragraph 8, “[t]he consultation undertaken by Network Rail took no account of any request to maintain and upgrade the existing crossing function.”

82. This is an important point. It is one thing for the public to say “*if* the crossing has to be closed, then this alternative route may be acceptable”. It is quite another for the public to say “this crossing can be closed *because* the alternative route is acceptable”. Having heard the evidence, it appears that the former question was consulted on, but not the later.

Strategic vs crossing-specific evidence

83. A further complication in Network Rail’s reliance on a “strategic case” for closure, is that there was a clear disjunct at the Inquiry between on the one hand, the “strategic” benefits which Network Rail sought to rely on to justify the closure of *all* level crossings and, on the other hand, the crossing-specific objections which a number of objectors raised in relation to the closure of one particular crossing.

84. The Ramblers were certainly not alone in presenting evidence at the Inquiry on a particular level crossing’s safety risks or that level crossing’s past record of impacts (or expected future impacts) on the operational network. It is not immediately apparent how such crossing-specific evidence can be weighed against Network Rail’s strategic case for closure of level crossings.

Failure to compare safety risks on road vs rail

85. A recurring criticism from a number of objectors against Network Rail’s approach through this Order is the failure, by Network Rail, to compare and consider (i) the safety risks associated with a level crossing with (ii) the safety risks associated with the

⁵⁹ For example, in response to XX by the Ramblers on E41, Mr Kenning stated ““...we received feedback – to say leave LC open – don’t need to do anything with it – *but that was really counter to what we were consulting on*” (emphasis added). Ms Tilbrook also agreed, during XX by the Ramblers on strategic matters, that the purpose of the public consultation was to obtain the public’s view on the alternative routes and not to consult the public on whether or not the level crossing should be closed.

proposed diversion for that level crossing (in particular, where that diversion requires users to use roads).

86. All parties agree that there is no recognised “comparator” or model through which these two types of safety risk can be compared. However, what is utterly lacking from Network Rail’s strategic approach, is any evaluative/qualitative assessment that considers whether a proposal will – on balance – be more or less safe from the user’s perspective. For an Order that has, as one of its three key underlying objectives, the reduction of safety risk, this is baffling.
87. This issue fell between the cracks of Network Rail’s witnesses. Mr Brunnen could speak to safety risk at level crossings and to that alone. Mott MacDonald had been tasked to simply consider highway safety issues and Ms Tilbrook was clear that they had not carried out any comparison between the risks on rail and road.⁶⁰
88. What was apparent throughout the Inquiry was the drastically different approach that Network Rail took to safety risks on its own rail network and safety risks on the highway network. Many of the arguments being put forward to support the safety case to close a level crossing (that the only way to eliminate the safety risk would be to close the level crossing and that the fact that there has been no accident at the crossing to date does not mean there will be none tomorrow) can be equally applied to use of the road network.
89. Yet, when points were put to Network Rail about safety concerns on the diversionary routes, a number of common responses – that the stretch of road was already being used by people today or that the numbers of users who would be being diverted would be relatively small – were a world away from the approach it takes to safety on its own network.
90. The danger here is that the end result of many of the proposals will be to *increase* safety risks for pedestrians, albeit that these risks no longer need to be managed by Network Rail.

⁶⁰ Mr Kenning also agreed that these safety risks were not compared (Mr Kenning XX by the Ramblers on strategic matters). Ms Tilbrook clarified during XX by the Ramblers on strategic matters that the reference to “accidents” on the Appraisal Summary Table template, at tab 6 of Ms Tilbrook’s appendices, did not involve any comparison between road and rail safety.

Conclusion on Network Rail's flawed strategy

91. For the above reasons, the Ramblers submit that Network Rail's strategic case and overarching methodology for choosing which crossings to close is not robust. Competing interests – for and against the case for closure – have not been sufficiently balanced and assessed in the decision-making process and the wider community's interests in maintaining the points of access over the level crossings has not been sufficiently considered.
92. The Ramblers fully accept that this Inquiry is not engaged in a judicial review of Network Rail's decision to close level crossings. However, the concerns raised here relating to Network Rail's decision-making process are relevant because Network Rail has chosen to use a standardised methodology for selecting which crossings to close.
93. If Network Rail seeks to apply such a standardised methodology to the closure of over 100 level crossings, and if there is a potential for this new methodology to set a precedent, then that methodology – in other words, the decision-making procedure – needs to be scrutinised.

2. Lack of details

94. Throughout this Inquiry process there has been a fundamental failing by Network Rail to provide sufficient levels of detail on the proposed alternative routes. It has pervaded Network Rail's case and there has been a clear disagreement between the Ramblers and Network Rail as to what level of detail is required at this stage in the process.
95. The Inspector will be cognisant that the Ramblers have in relation to numerous crossing proposals asked Network Rail for further details on (i) what exactly is being proposed and (ii) how particular issues currently present on the alternative routes will be addressed. Depending on the route at issue, further details have been sought on how exactly road safety measures will be implemented,⁶¹ how issues of flooding will be

⁶¹ See, for example, the Ramblers proof of evidence for E29 at [16]; E33 at [15] and E54 at [16].

dealt with,⁶² and how steep gradients will be made accessible.⁶³ It is noted that a number of other objectors have also demanded further details from Network Rail on what exactly is being proposed for particular crossings.⁶⁴

96. Network Rail has made it clear that it considers the majority of these issues are matters for the “detailed design” stage, which will post-date the making of the Order. At this stage of the process, Network Rail has provided “design freeze” maps and a design guide (NR12) that set out “indicative” proposals as to what it intends to do in order to provide suitable and convenient alternative routes. Ms Tilbrook has been candid about the fact that these are not the final proposals.⁶⁵ They are not set in stone, and they could change at the detailed design stage. Ultimately, the final proposals will – according to Network Rail – need to be agreed with the local highway authority, pursuant to the certification requirements set out in the Order and the side agreement that has been entered into between Network Rail and Essex County Council.

97. Put simply, it is unacceptable to leave such details to the detailed design stage. There are three key reasons why this is so:

(1) Details are necessary to decide if a closure is justified

98. As has been noted above, Network Rail has structured its strategic case in a very particular way. Network Rail has argued that for each of the level crossings, closure is justified *because* a suitable and convenient alternative route has been found. If that is how Network Rail seeks to justify their case for each crossing, then the details being sought must be before the Inspector now so that he can decide if Network Rail are right.

99. For example, if a route is prone to flooding, it will not be suitable for use. If a route has a large number of steps to surmount and dismount, it will not be convenient for use. For the Inspector to conclude that a route is “suitable and convenient” in order to justify

⁶² See, for example, the Ramblers proof of evidence for H05.

⁶³ See, for example, the Ramblers proof for E05 at [13] and for HA3 at [10] HA4 at [22].

⁶⁴ For example, Colchester Borough Council, Councillor Liddy and Mr Kay on behalf of Wivenhoe Town Council all sought further details as to what exactly Network Rail is proposing to do in terms of safety mitigation on the High Street in relation to E41.

⁶⁵ Ms Tilbrook XX by the Ramblers on strategic matters.

the closure of a level crossing, then the devil really is in the detail, and the detail must be before him now.⁶⁶

(2) Interested parties need to assess the detail of what is being proposed

100. The points of detail are often the basis for the Ramblers maintaining an objection. It is against the interests of third parties, who are trying to establish whether or not to object to a proposal, for Network Rail to simply state that key matters – going to the heart of whether a proposed route really would be suitable – will be addressed between Network Rail and the highway authority after the Order is made. In fact, it is, with respect, a waste of objectors’ time for them to attend and participate in the Inquiry if in relation to key points of objection, they are simply told that these are not matters for consideration at this stage.

101. It was an ongoing frustration, to say the least, that for a number of crossings, the requested details were (to some extent) disclosed during the examination-in-chief of Network Rail’s witnesses. This started during the first week of crossing-specific evidence, with E38 Battlesbridge, when it was clarified that a reference in the design guide and design freeze plans to “proposed 2m wide steps Type S2 up the embankment” was likely to require five flights of 12 steps on either side – a total of 120 steps to be climbed and descended.⁶⁷

102. This led to Mr Lee, as a witness for Essex County Council (“ECC”) (the relevant highway authority), stating that he was “stunned” by this information, that “his jaw did sort of hit the desk – to hear that 60 steps required – albeit broken into five flights and four landings”, and that he “had no inclination or imagination of 5 flights of steps”. It is of serious concern that ECC witnesses would have no inclination of what is actually being proposed by Network Rail at this stage in the process.

103. The Ramblers were grateful for the Inspector’s ruling during the evidence for E41 Paget Road (when there was a similar disclosure of details for the proposed safety

⁶⁶ This is in contrast to other TWAOs, where the details of exactly how new structures will be built, or how ROW will be diverted can be left to detailed design stage because these issues do not, themselves, justify the need for the scheme. It is the novel integration of the section 5(6) test into Network Rail’s strategic case that has brought questions of detail to the front and centre of its case for closure.

⁶⁷ Ms Tilbrook XIC for E38.

measures on the High Road which had only been provided, in part, to certain objectors) that Network Rail should check if any further details are likely to be disclosed during examination-in-chief and ensure these are disclosed in advance to interested parties so that they have an adequate opportunity to consider and respond to them.

104. It seemed from Network Rail's response to the Inspector's ruling that whilst feasibility work has been done by Mott MacDonald in relation to the proposed alternative routes, Network Rail did not intend to submit all of that work to the Inquiry unless the feasibility of a proposal was specifically being questioned. Network Rail agreed to check if such details should be disclosed for the crossings left to be considered, for which the Ramblers were grateful, nonetheless such details continued to be disclosed at subsequent crossings at a very late stage.

105. The fact that these details were disclosed during the Inquiry is a strong indication that this is necessary information to support Network Rail's case.⁶⁸

(3) *Lack of future accountability*

106. Network Rail has placed heavy reliance on the post-Order certification stage to ensure that the details of a suitable and convenient alternative route will be finally determined and agreed between the highway authority and Network Rail before a crossing can be closed. It is highly problematic that the details agreed to by the highway authority may differ from what has been put forward, or suggested, by Network Rail's witnesses at this Inquiry.

107. Firstly, the Inspector cannot know what the end-result of this process will look like. As has been noted, the details (of surfacing, access, safety measures, flood prevention measures) can and will affect whether a route is suitable and convenient. It does not appear to be rational for the Inspector, and the Secretary of State, to agree to the closure of a level crossing on the basis that a suitable and convenient route will be provided if he does not actually know that such a route will be implemented. It would seem irrational for the Inspector to sign off on the suitability of an alternative route in

⁶⁸ Notwithstanding that it is clear that any such details are still only "indicative".

circumstances where, because matters of detail are left to a post-Order certification stage, he cannot know what, in fact, he is signing off on.

108. What is more, it is entirely unclear how interested third parties, such as the Ramblers, can challenge the closure of a level crossing in circumstances where the highway authority and Network Rail may later agree between themselves to an alternative route that is not suitable and convenient. Third parties are left out entirely from any post-Order certification process.

109. As a hypothetical example, Network Rail may have proposed a particular width and surfacing for a new ROW, and the Inspector may have agreed to the closure in part because this width and surfacing would make the alternative route suitable for use. If at detailed design stage it is agreed with the highway authority that such a width and surfacing is not required, then the first the public will know about that change to the proposals is when the crossing is closed and the path is diverted. It is unclear how the public could challenge such a decision by the highway authority and Network Rail. Network Rail would still be operating within the confines of the Order powers (as the Order does not address this level of detail).

Conclusion on lack of details

110. Whether or not Network Rail has provided sufficient details for its proposals is a key question that the Inspector will need to grapple with. Perhaps it is useful to refer to Mr Kenning's analogy of a request for planning permission for a kitchen extension.⁶⁹ Mr Kenning argued that if somebody wanted to do a kitchen extension to their property, they would first seek planning permission for the extension in principle, before spending money on working out the details of the kitchen they will put into it. As he put it, why would Network Rail do the detail design for 58 crossings at this stage, having regard to the need to spend money wisely, when all they are seeking is permission in principle?

111. The answer in response is quite simple, it is because the details, here, justify the permission in principle. You do not obtain planning permission for an extension

⁶⁹ Mr Kenning XX by the Ramblers for H05.

because you can provide a kitchen in it. Yet, Network Rail’s case is that they can get powers to close a level crossing *because* they can show a suitable and convenient route is possible. If that is so, they need to provide details of this now.

SECTION 4: INADEQUACIES OF NETWORK RAIL’S EVIDENCE

112. In addition to the failure to provide sufficient details for the proposals being put forward, the Ramblers also consider that there have been many uncertainties, inaccuracies and flaws in Network Rail’s evidence at this Inquiry, so that the Inspector must be cautious to rely on it.

Lack of clarity on Network Rail’s case

(1) ALCRM

113. It is easy to forget the extent to which the scope of Network Rail’s case has been clarified during the Inquiry process. A notable example is the relevance of the All Level Crossing Risk Model (“ALCRM”) scores of individual crossings. There was a significant amount of information in Network Rail’s statement of case, the core documents and both Mr Brunnen’s and Mr Fisk’s proofs of evidence on the ALCRM model and how it is calculated. Each crossing’s ALCRM score has been referred to, not only in the statement of case and Mr Fisk’s proof of evidence, but also in the earlier consultation documents.⁷⁰ It was reasonably assumed by the Ramblers that a crossing’s ALCRM score had been a relevant factor that Network Rail had considered in determining whether or not to close that crossing by way of diversion through this Order.

114. The only clarifications that the individual ALCRM scores was, in fact, not used to select or prioritise crossings for inclusion in this Order is found at paragraphs 8.24 of Mr Brunnen’s proof and 5.2 of Mr Fisk’s proof. It was apparent at the Inquiry that

⁷⁰ See Mr Kenning’s appendices, tab 5.

the Ramblers had not been the only interested party confused by this presentation of evidence.⁷¹

(2) CBA scores

115. Perhaps even more confusing was Network Rail’s evidence on the relevance (or otherwise) of the cost-benefit analysis (“CBA”) scores in Mr Fisk’s proof and whether or not CBA figures had, more generally, been considered when determining which proposals to include in the Order.

116. During cross-examination of Dr Algaard by the Ramblers (prior to the adjournment of the Inquiry in 2017), Dr Algaard was adamant that a CBA had been carried out for the project and that, at some stage in the process, the CBA was considered. This led to considerable confusion, as it has seemed that there was no evidence of a CBA score (whether for the project as a whole or for individual crossing proposals) having been part of the crossing-selection process by Network Rail.

117. Numerous CBA scores had been provided in Mr Fisk’s proof for each of the level crossings on the different safety mitigation considered by the level crossing manager previously as part of the his/her regular risk assessment/options exercise at the crossing. But as Mr Fisk continually re-affirmed during his evidence at the Inquiry, these CBA scores are “not linked to [the] project whatsoever”.⁷² And, indeed this was further clarified at paragraph 5 of Mr Fisk’s supplementary proof, where Mr Fisk makes clear that the costs associated with a diversion, used to form a number of these CBA scores, are “not based on any specific diversions linked to this Order”.⁷³

118. Likewise, when Mr Kenning was asked, during examination-in-chief on strategic matters, whether the CBA figures in Mr Fisk’s proof were used by him when developing the project, he clearly answered “no” and explained that the CBAs in Mr Fisk’s evidence are “part of the day to day risk management of Network Rail’s

⁷¹ For example, ELAF made clear during its XX of Mr Kenning on strategic matters that they were under the impression that there was a connection between risks and closure.

⁷² Mr Fisk, XX at T04 and at T05.

⁷³ Mr Kenning also stated, in response to questions in XX by Colchester Borough Council at E41 as to whether any CBA was done, “...not a direct CBA undertaken for each individual level crossing – but costs of diversion less than technology cost of fitting technology at all sites...”

assets...although I can see how people may perceive that they have been used in the project”.

119. It is impossible to reconcile the position of Mr Fisk’s evidence with the initial evidence of Dr Algaard.⁷⁴

120. There are two things to note from this. One is a general concern over the consistency of Network Rail’s evidence. Dr Algaard agreed both that she was familiar with the Order and the strategy underlying it and that, as the client for the Order, she agreed to the scope of works and made the key decisions.⁷⁵ Yet, with respect, she was simply wrong in thinking that the individual CBA scores put forward in Mr Fisk’s evidence had been factored into the crossing-selection decision.

121. The second, and perhaps more important, concern, is that Network Rail has failed to put forward any project-linked CBA (or other cost-efficiency assessment calculation) to support their case – whether on a project-wide scale or on an individual crossing scale.⁷⁶ Where cost-savings constitutes one of the three key strategic benefits that Network Rail allege support this Order it is bizarre for this to be lacking.⁷⁷

122. Furthermore, it goes without saying that the inclusion of the CBA scores in Mr Fisk’s evidence led to a considerable waste of time on the part of objectors in seeking to grapple with its relevance at this Inquiry. Whilst a number of specific cost figures had been included, such as £50,000 for a diversion, Mr Fisk made clear during cross examination, that these costs were “rudimentary”, “historic” and “average”. Essentially they are a “default” costing that do not in any way represent a specific costing estimate for a particular level crossing.

⁷⁴ During cross-examination on strategic matters by the Ramblers, Dr Algaard stated in relation to the CBA scores in Mr Fisk’s proof, “why provide the information if we haven’t used it?” Dr Algaard also noted that the application had taken into consideration the CBA scores in Mr Fisk’s evidence and stated that all evidence considered by Mr Fisk was relevant to the decision to proceed with the Inquiry.

⁷⁵ Dr Algaard XX on strategic matters.

⁷⁶ It is recognised that general, Order-wide, calculations of cost savings were submitted by Network Rail in September 2018, during the course of the adjournment (see NR-106). However, these simply state estimations of costs savings, rather than calculating a CBA, or equivalent, score.

⁷⁷ Indeed, this was apparent during the evidence of E38 Battlesbridge, when the Inspector noted that for all the work associated with the closure of that level crossing, including the changes to the vehicle restraint system, the default costing figure of £50,000 would not go anywhere near covering the costs. The Inspector then asked Ms Tilbrook “...at what point is this scheme then costed out and will a CBA be done at that point on the actual figures of the cost of diverting the footpath (taking in all the engineering works that are to be done) and not the £50,000 [figure] which seems highly optimistic at that case? Ms Tilbrook fairly noted that she was not the correct witness to answer that question, but it appears Network Rail did not give an answer to this question.

123. Ultimately, this evidence was too far removed from the specifics of this Inquiry so as to be irrelevant. It should not have been included.

(3) *Alternative mitigation measures and impacts on signalling*

124. Much time was spent at the Inquiry hearing evidence as to the possible feasibility of alternative safety mitigation measures at the level crossings and, in particular, the impacts that introduction of miniature stop lights (“MSL”) – whether integrated MSL and/or overlay MSL – might have on wider signalling on the railway network.

125. The Ramblers appreciate that Network Rail provided this evidence (often communicated during the examination-in-chief of Mr Kenning) partly in response to objectors arguing that such alternative mitigation technology should be, and could be, installed at a particular level crossing.

126. However, it is worth noting that Network Rail does not appear to rely on this evidence to support their case for closure. Network Rail has not argued that a particular level crossing should be closed by way of diversion because it *cannot* implement alternative technology,⁷⁸ but simply because it *can* implement the diversion. Therefore, any detailed evidence that either Mr Kenning or Mr Fisk gave on signalling, or the feasibility of alternative technology, is, in fact, irrelevant to Network Rail’s strategic case and should be put to one side.⁷⁹

(4) *What constitutes the alternative route that is to be assessed*

127. One further area of confusion from Network Rail’s case, as a whole, was the extent to which the alternative routes, each marked in yellow/orange and/or red⁸⁰ on the design freeze maps, was, in reality, the alternative route that Network Rail relied on to show that a suitable and convenient route would exist.

⁷⁸ And certainly any such detailed evidence was not put forward as part of the Network Rail proofs of evidence.

⁷⁹ It was also often not possible for objectors to fully appreciate the details of this information, bearing in mind it was often heard for the first time during oral evidence at the inquiry.

⁸⁰ Depending on whether it utilises new or existing highway.

128. This confusion only arose towards the end of the Inquiry and, in particular, when assessing the safety evidence on T05 Howells Farm and E28 Whipps Farmers. It became apparent through scrutinising the evidence of Ms Tilbrook for these crossings that, in reality, Network Rail and Mott MacDonald did not think that users would *actually* use parts of the marked alternative routes and that this affected whether further safety mitigation measures on these parts of the routes were seen to be justified.

129. Further details of these issues are dealt with below in the crossing-specific part of these submissions. However, suffice it to say that the Ramblers consider that the entirety of the “alternative route” marked out on the design freeze map needs to be assessed and considered for its suitability. In particular, the entirety of that route needs to be assessed for its safety for walkers. That is the basis on which the Ramblers’ transport witness, Mr Russell, considered the routes and it is the basis on which the Ramblers spent considerable time and resources preparing evidence for the Inquiry. It is also the only reasonable interpretation of the Network Rail documentation.

Inaccuracies in Network Rail’s evidence

130. Notwithstanding that this has been a lengthy Inquiry, with considerable documentation, there has been a significant number of errors and inaccuracies across Network Rail’s evidence.

131. Whilst it is accepted that some of these errors, as with any documentation, are a matter of typos,⁸¹ a number of them went to key points of evidence for a specific crossing.⁸² For example, for E31 Mr Fisk during oral evidence corrected the sightline

⁸¹ For example, Mr Fisk’s proof at paragraph 7.13 (on E02) in the final sentence should say “inside” not “outside” the night time quiet period; at paragraph 14.9 (on E10), on the last line of the sightlines table, it should state “yes” not “no”, regarding whether sighting is compliant; at paragraph 33.14 (on E33) it should say that whistle boards are effective “outside” the hours of 00.00-06.00 not “between”; at paragraph 63.7 (on T-04) it should say 147 pedestrians over the total period of 9 days rather than 149 pedestrians a day; Ms Tilbrook’s proof at para 2.15.13 (on E17 and E18) should refer to “bridleway” not “footpath”; at paragraph 2.25.5 (on E30 and E31) refers to 2 equestrians when this should read 2 cyclists, so the total cyclists should be 14 not 12; the DIA Overview Report (NR-121) for E33 on p. 38 in the third column from the left, refers to the level crossing being used by approximately 2 people a day when it was more in the range of around 20 (from the census); the design team response in the RSA Design Team Response Report for T05 on p. 36 incorrectly refers to Southend Road when it should refer to High Road.

⁸² Some also went to key points of the strategic case. Ms Tilbrook, for example, agreed in XX on strategic matters that where there had been references in her proof to the fact that this Order covered phases 1 and 2 only (see at paragraph 1.4.2-1.4.3) that this was a mistake and that it should align with Mr Kenning’s evidence that the Order covered phases 1, 2 and 4.

measurements for the level crossing, which led to three of the four sightlines changing. As a result of one of these changes, the sighting at the crossing was no longer compliant.

132. Due to this type of last-minute correction, the Inspector asked that Mr Fisk go back through his evidence as a whole and produce an errata sheet if necessary for any further changes. Whilst this was produced, important errors were still outstanding including, in particular, the CBA score for “Closure via TWAO” for T05. This read as 0.09 and “not supporting” the costs of diversion in Mr Fisk’s proof, but Mr Fisk explained in oral evidence that actually this should read as 0.90 and “supportive”. There was no substantial explanation for how an inaccuracy such as this could have slipped through the net.

133. Likewise, Ms Tilbrook’s proof at 2.54.19 stated that the proposals for that crossing (T05) had been discussed with the local highway authority, officers of which “have objected” to the proposal. She explained in evidence that this should instead have said “have not objected”. Furthermore, she clarified that where, in her rebuttal to Mr Russell for this crossing at 15.14.3,⁸³ she had stated that “[t]he [Road Safety Audit (“RSA”)] concluded that there were no issues associated with this section of the route” that should be struck out entirely – this statement was simply incorrect, the RSA *had* found issues associated with that section of the route. In a similar vein, for E29, Ms Tilbrook’s rebuttal to the Ramblers stated at 12.13 that an independent RSA had been undertaken by ECC in March 2017. That too was incorrect. No RSA was carried out by ECC for that crossing.⁸⁴

134. What is more, there were numerous examples where the text for crossings appeared to have been mixed up,⁸⁵ where evidence for a particular level crossing was inadvertently omitted,⁸⁶ where there were inconsistencies between key pieces of

⁸³ Ms Tilbrook’s rebuttal to the Ramblers.

⁸⁴ As confirmed by Ms Tilbrook in examination-in-chief for E29.

⁸⁵ For example, for E17 and E18, Mr Kenning agreed in XX that the reference in the Statement of Case (NR26) at p.81 that the proposals would “direct users to a single crossing point over the railway” was incorrect; the DIA Overview Report (NR-121) refers to the wrong diversion description for E35, for HA4 and T01; it was agreed the last sentence at 61.4 (on T05) of Mr Kenning’s proof could be struck through because it appears to refer to a different crossing, as well as the reference to a “new bridleway” at 61.6; Ms Tilbrook’s proof at 2.54.5 (on T05) incorrectly referred to H06 and its consultation records.

⁸⁶ For example, the failure to provide ATC data for Ockenden road in relation to HA3 and HA4.

information, such as the length of a diversion,⁸⁷ where key features of the proposals were not referred to on the design freeze or design guide⁸⁸ or where features present on the ground were incorrectly described in the materials.⁸⁹

135. At one point, the Inspector queried why the census data for E26 Barbara Close was collected during two different periods of time, instead of a continuous period, noting further that the data for the second weekend showed no usage, which contrasted to the level of usage for the weekend before. When Network Rail then reviewed the data, it was discovered that there had in fact been 24 people using the level crossing on the second Saturday and 5 people using it on the second Sunday. Network Rail was unable to provide any reason why this data was not included in the original documents.⁹⁰

136. The Ramblers do not intend to draw unnecessary attention to these errors and mistakes. Of course, mistakes do, and always will, happen. But it is the *number* of inaccuracies and inconsistencies, many of which were unexplained by the Network Rail witnesses, that is of concern here. Having regard to the scale of this Order, it is, perhaps, not surprising that so many inaccuracies arose. Yet, all of these inaccuracies are liable to cause confusion for interested parties and Ramblers volunteers who are seeking to grapple with the individual case for closure for each of the level crossings. It certainly should not be the job of objectors to ensure that the Inspector has accurate information before him on the situation on the ground at the level crossings.

Insufficient information on usage

⁸⁷ Most notably, differences between the quoted diversion lengths in Network Rail's Statement of Case (NR26) and other Network Rail evidence, such as for E29 where the Statement of Case put the diversion length as 720m (on p. 103) but Ms Tilbrook's proof quoted 620m at 2.24.10, or for E38 where the Statement of Case put the diversion length as 100m (on p. 123) but Ms Tilbrook's proof quoted 375m at 2.31.9, or for T01 where the Statement of Case put the diversion length as 280m (p. 185) but Ms Tilbrook's proof quoted 700m at 2.52.8.

⁸⁸ For example, for E37 the design freeze did not show the watercourse or the requirement for fencing for the horse paddocks; for E45 and E46, the design freeze plan does not show the development site for 150 houses in the relevant area, notwithstanding that this was included in the round 3 consultation documents (see p.354 of Ms Tilbrook's appendices); and there was no mention of the need for steps in the design freeze or design guide for HA3 and HA4.

⁸⁹ For example, for E26 Ms Tilbrook's proof of evidence states that a DIA was deemed not to be required in part due to the "presence of narrow gates" (see at 2.22.10, as well as the reference to a "sloped set of narrow gates" at 2.2.2), but it was agreed at the Inquiry that these gates are in fact metal semi-circular kissing gates, so that any reference to narrow gates/wicket gates in the evidence for E26 could be struck through.

⁹⁰ See Network Rail's Note regarding Census Data at E26 – Barbara Close (NR-165).

137. In assessing the impact that a proposed footpath diversion will have on users, it is absolutely crucial that there is a sound understanding of who is using the footpath and what purpose they are using it for. It is common ground between Network Rail and the Ramblers, that an extra 10 minutes added onto a walk can have markedly different impacts on user experience. It may depend on whether the walk is for utility or leisure purposes. It may depend on the proportion of the overall walk (from origin to destination) that the 10 minute add-on constitutes. It may also depend on whether the diversion forms part of a “there and back” route or as part of circular walking.
138. In short, to fairly understand the impact of a diversion, the Inspector will need to understand how exactly the current route is being used and, most crucially, where users are coming from and where they are going to.
139. In this regard, Network Rail’s information-base for the individual proposals is woefully inadequate. It seeks to rely simply on (i) a one-off 9-day visual census, (ii) any responses to the public consultation events (iii) its discussions with local highway authorities and (iv) Mott MacDonald’s own assessment of likely origins and destinations for users through a desktop study of the wider ordinance survey maps.
140. This is not sufficient. The key ingredient – origin and destination surveys – is missing and, as has been made clear by the Ramblers throughout this Inquiry, that is a fatal flaw that pervades the crossing-specific evidence. It is impossible to establish if a user caught on the 9-day census was popping out for a 20-minute dog-walk or completing the last stretch of a 20km hike – and that kind of distinction, and local nuance, makes all the difference to whether the proposed alternative is, in fact, appropriate.
141. The Ramblers also note that public consultation was partly publicised in local communities through a leaflet drop on properties. However, from Mr Kenning’s proof, at paragraph 3.32, it appears that this was restricted to an area “1.5 miles from the level crossing depending on the density of residences”. Many of the crossings are situated

in the open countryside, far removed from residences and there is a concern that such leafletting would not have reached the relevant users.⁹¹

142. As stated in the Ramblers' opening statement, once these rights of way are lost, they are lost for ever.⁹² It is unacceptable to authorise such widespread changes to the public ROW network on the basis on such limited information. It is worth reiterating that if Network Rail were operating under section 119A of the HA 1980 to carry out these diversions, Schedule 1(i) of the Rail Crossing Extinguishment and Diversion Orders Regulations 1993 would require the applicant to provide reasons for the proposed diversion order, including, specifically, information about:

- I. *The use currently made of the existing path, including numbers and types of users, and whether there are significant seasonal variations, giving the source for this information, together with details of any survey carried out (any circumstances preventing or inhibiting such use must also be mentioned);*

143. This statutory requirement strongly indicates that Parliament expected significant information-gathering and assessment to be carried out before any permanent diversion to the ROW network could be made. It is a cue, or reminder, to the applicant to ensure that they have done their homework before seeking an order.

144. For the reasons given above, the Ramblers do not consider that Network Rail have provided such sufficient information on usage.

Insufficient assessment of the routes

145. Furthermore, the Ramblers are concerned that the team from Mott MacDonald who assessed the suitability of the alternative routes lacked specific public ROW expertise, from the perspective of ROW management. Ms Tilbrook is not a member of IPROW and agreed that she had no direct experience of maintaining the ROW network, nor did anybody in the team have prior experience as a ROW officer in a local authority.⁹³

⁹¹ Examples of this include E02, where 1.5 miles would not appear to reach far into Harlow and even E30 and E31 where, again, it would not reach far into Canvey Island.

⁹² Ramblers' Opening Statement at paragraph 33.

⁹³ Ms Tilbrook XX by the Ramblers on strategic matters.

146. In terms of site visits, and any “on the ground” assessments of the alternative routes, it seems that nobody from the Network Rail or Mott MacDonald team walked the existing and proposed diversionary routes to compare and consider the impact on user experience. Ms Tilbrook did not consider this to be necessary,⁹⁴ but if the key issue is whether users will continue to use the diversion, then this type of assessment must be done. There is a real risk that whilst the proposals were assessed by a number of different experts addressing a number of different technical issues, the most important assessment – what the overall impact would be on user experience – was missed.

147. Of course such an “on the ground” comparative assessment would have taken considerable time to carry out, due to the inappropriate scale of these proposals. In fact, it is questionable that initial site visits could have been completed for the 217 initial proposals (stretching across the Essex area, Suffolk, Cambridgeshire and Norfolk) “in September 2015”, as is indicated at paragraph 3.17 of Mr Kenning’s proof. Any party with experience of undertaking site visits for the proposals in this Order will be all too aware of the considerable time it takes to visit these sites. In light of this, it is, perhaps, unsurprising that “most” of the site visits that Ms Tilbrook, herself, carried out⁹⁵ were not until August and early September 2018⁹⁶ – almost a year after the Inquiry initially commenced and over a year after her proof of evidence was submitted.

148. In contrast, it was readily apparent from the evidence of the Ramblers volunteers appearing at this Inquiry that visiting the site and assessing the proposed diversions on the ground was a must. Not one Ramblers volunteer gave evidence on a crossing that they had not been to on site. An attempt to walk the alternative route was a natural first step in their assessment of the proposals.

Flaws in Mott MacDonald’s RSAs

⁹⁴ Ms Tilbrook XX by the Ramblers on strategic matters.

⁹⁵ As clarified by Ms Tilbrook in XX by the Ramblers on strategic matters, she had walked all the sites where there is an interface with the road.

⁹⁶ Ms Tilbrook XX by the Ramblers on strategic matters.

149. The Ramblers have made it clear throughout the Inquiry, and primarily through the evidence of Mr Russell,⁹⁷ that they do not consider that the RSAs⁹⁸ carried out by Mott MacDonald,⁹⁹ are fit for purpose. A number of the concerns raised by the Ramblers have been echoed by other objectors.¹⁰⁰ The key concerns are as follows:

(1) Overseeing Organisation

150. It is a fatal flaw that the appropriate highway authorities have not been designated as the overseeing organisation (“OO”) or “project sponsor” for the RSAs. Rather Network Rail has designated itself in both of these roles. Ms Tilbrook was adamant, and the RSAs state clearly, that they have been carried out in accordance with HD19/15 of the Design Manual for Roads and Bridges (“DMRB”), however HD19/15 states quite clearly in the definitions sections at paragraph 1.24,¹⁰¹ that:

Overseeing Organisation: The highway or road authority responsible for the motorway or trunk road Highway Improvement Scheme to be Road Safety Audited, or in the case of developer-led or third party organisation promoted schemes, the highway or road authority responsible for the motorway or trunk road affected by the proposed Highway Improvement Scheme.
(Emphasis added.)

And at paragraph 1.26:

Project Sponsor/Project Manager: A person from the Overseeing Organisation responsible for ensuring the progression of a scheme in accordance with the policy and procedures of the Overseeing Organisation, and ensuring compliance with the requirements of this Standard. It should be noted that the Project Sponsor may not always be from the same organisation as those promoting the scheme, as the scheme may be proposed by a third party organisation (see paragraph 1.40).

⁹⁷ Mr Russell is a Technical Director of Motion Consulting, which specialises in transport planning, traffic engineering and highway design. He is a Chartered Transport Planner and has 25 years’ worth of experience in the field of transport planning and highway design.

⁹⁸ NR16.

⁹⁹ And relied upon by Network Rail to demonstrate that the alternative routes are safe enough for use, as agreed by Ms Tilbrook in XX by the Ramblers on strategic matters.

¹⁰⁰ For example, Mr Burbridge on behalf of I2 Development Management and E&A Strategic Land for E29 Browne & Tawse, stated during his evidence on that crossing that “...for various reasons that have been brought to your attention – including what has been put forward by [Mr Russell] – I think very little weight can be placed on the audit [RSA]...”

¹⁰¹ See extracts included in NR-123.

151. Mr Russell confirmed in examination-in-chief on strategic matters that this project fell within the category of a “developer-led or third party organisation promoted scheme”, details for which are to be found on p. 2/8 of HD19/15 at paragraphs 2.54-2.60. In these paragraphs, there is a clear requirement for the involvement of both the OO and the “project sponsor” throughout the RSA process. Most notably, as Mr Russell confirmed in evidence, the OO should sign off the RSA brief (see at paragraph 2.57 referring to paragraphs 2.87 and 2.88). The OO is also crucially involved at the later stages of the RSA process when recommendations made in the RSA report either need to be incorporated into the project or dealt with by means of an “Exception Report”. That Exception Report will need to be to the satisfaction of the OO Project Sponsor and Director (see paragraphs 2.59 and 2.60) and for a Stage 1 RSA Report, this process must be followed before planning consent is given (paragraph 2.59).

152. On the basis of the Network Rail RSAs and because Network Rail has been designated as the OO, it has been (and may continue to be, if the Order is made) simply Network Rail overseeing Network Rail through this process. This is simply unacceptable and does not accord with HD19/15. The purpose of designating the highway authority in these roles is to ensure that it is overseen by individuals with highways expertise, who will be viewing the process from the perspective of the authority who will be responsible for the road network affected.

153. Ms Tilbrook accepted in evidence that the OO and “project sponsor” should have been the relevant highway authority and she could not easily explain why, what she referred to as the “oversight”, had occurred.¹⁰² She argued that “although the project brief has named them incorrectly the project has not proceeded on that basis”,¹⁰³ but she had to agree that it was Network Rail who had given the brief to Mott MacDonald for the RSAs,¹⁰⁴ and it is apparent from the evidence (including the minutes of meetings with the highway authorities, found at tab 5 of Ms Tilbrook’s appendices¹⁰⁵) that rather than actively involving the Highway Authorities through the process, the RSAs were simply shared with them.

¹⁰² Ms Tilbrook in response to the Inspector’s questions on strategic matters.

¹⁰³ Ms Tilbrook XX by the Ramblers on strategic matters.

¹⁰⁴ Ms Tilbrook XX by the Ramblers on strategic matters.

¹⁰⁵ See, for example, on p. 378 on HA3 Manor Farm, it is stated:

154. There has been considerable objection to this Order by the highway authorities, to a large extent on road safety grounds. This is a clear indication that the error here was far more fundamental than a mere “oversight”.¹⁰⁶

155. On the basis of this point alone, the Ramblers urge the Inspector to place no weight on the RSAs conducted by Mott MacDonald. As Mr Russell stated in examination-in-chief on strategic matters, “it simply hasn’t followed the process that it claims to follow”.

(2) **Lack of independence**

156. In addition, Mr Russell has highlighted¹⁰⁷ that Ms Tilbrook, who was clearly part of the design team for the project, has signed off and approved the Essex Stage 1 Road Safety Audit (Report no. 367516/RPT016 Revision B). Mr Russell explained that the design team must remain completely independent from the audit team during the auditing process, citing to paragraph 1.6 of HD19/15 which states:

It is recommended that Design Teams include staff with Road Safety Engineering experience to ensure that road safety issues are considered during the design process. However, Road Safety Engineers included within the Design Team cannot be permitted to be part of the appointed Road Safety Audit Teams. This is because of a potential lack of independence from the scheme design as their views may be influenced by familiarity and a natural “pride of authorship”. The involvement of a Road Safety Engineer within the Design Team is not considered to be an acceptable substitute for undertaking Road Safety Audit.

157. HD19/15 also states at paragraph 2.71 (which falls within a black box and is therefore mandatory guidance):

It is a fundamental principle of the Road Safety Auditing process that the Road Safety Audit Team is independent from the Design Team (see paragraph 1.6). The Project Sponsor must not accept a Road Safety Audit Team where its independence

“JR [rural rights of way, London Borough of Havering] also raised the point that Pea Lane has a national speed limit and there is no separate pedestrian footpath as you approach the village. SP [Mott MacDonald] advised that a Road Safety Audit is being undertaken at the moment; the draft outcomes will be produced on Friday. SP to check whether this can be shared with LBH. If the Road Safety Audit identifies the need for improvements, Mott MacDonald would raise to NR for its consideration.” (Emphasis added.)

¹⁰⁶ It is important to note that whilst ECC has submitted a “Joint Statement with NR on Road Safety Audits”, ECC is only one of the affected Highways Authorities affected by this Order.

¹⁰⁷ Through both a letter submitted to the Inquiry on 13 October 2017, prior to the Inquiry commencing and through his supplementary proof.

from the Design Team is in doubt. In such cases, an alternative Road Safety Audit Team must be proposed.

158. Mr Russell was very clear in his oral evidence on this point. He stated, in cross-examination on strategic matters that:

“...I would not expect the design team to be involved in the RSA in any capacity”

“based on the evidence before me which shows ST having been involved in some capacity in the RSA audit – then yes my evidence is that the audits are not – at least seem to be independent – and we simply do not know who’s done what where – all I can go on is who’s signed documents and correspondence between people – there is absolutely no reason why a member of the design team should be signing any part of the audit – no reason whatsoever – HD19/15 very clear on this – issue is not just actively influencing the report but subconsciously influencing”

159. Ms Tilbrook submitted further evidence on this point during the first adjournment, which included a “Document Review Notice” (appendix C to Ms Tilbrook’s supplementary proof). With respect, the status and role of this document was not clear,¹⁰⁸ including the role of the Mott MacDonald individuals on the distribution list, but it appears to be a document passing back and forth between Network Rail (acting as the third party organisation seeking to promote the scheme, but who are also listed as the OO and project sponsor overseeing the RSAs) and Mott MacDonald (acting, it would seem here in its capacity as the design team but discussing the content of the audit reports carried out by the auditing team (also Mott MacDonald)). Perhaps this speaks for itself.

160. Ms Tilbrook’s evidence was that there was “absolutely no question as to the independence of the audit team” in respect of the changes made to the RSA report that Ms Tilbrook was approving in Report no. 367516/RPT016 Revision B, emphasising that the change in question was an immaterial typo. But the question is whether, considering Ms Tilbrook’s signature on the document, her involvement in the project and the DRN itself, there is “doubt” as to the independence of the two Mott MacDonald teams. From the above, this must be so.

(3) Lack of necessary information

¹⁰⁸ Mr Russell stated in examination-in-chief on strategic matters that he had “no idea what its purpose is”.

161. Mr Russell has stated from the outset that further information needs to be made available to the auditors, namely data on traffic volume, traffic speed, non-motorised user (“NMU”) flows and road collision data.¹⁰⁹ Ms Tilbrook noted that to an extent this data has been considered outside of the RSA-process, but also that it will be available for consideration when the Stage 2 RSAs are carried out at the detailed design stage.

162. However, the Secretary of State is being asked to make a decision now and on the basis of the Stage 1 RSAs only. He needs to be confident that the proposals he may sign off on will, in fact, be sufficiently safe for users. This is why this information, as it pertains to a full assessment of road safety, needs to be considered at this pre-Order stage.

163. Ms Tilbrook accepted that if a fundamental issue were to arise at Stage 2,¹¹⁰ then Network Rail would not be able to close the level crossing and implement the diversion.¹¹¹ However, she appeared to base this on her understanding that Network Rail would, in these circumstances, be unable to have the diversionary route certified by the highway authority. This ignores the drafting of the Order, which only places a requirement on the highway authority to certify certain new stretches of highway (see Article 13(3) and Article 15). Where changes are proposed to existing highway, there is no certification requirement. Furthermore, nothing in the drafting of the Order requires any Stage 2 RSAs to be carried out – there is no legal guarantee that this will be done.

164. Due to these uncertainties arising from the drafting of the Order, the Ramblers submit that this information needs to have already been considered through the auditing process before the Order is made.

(4) Impossible site visits

¹⁰⁹ See Mr Russell’s proof of evidence at paragraph 3.9.

¹¹⁰ It was Mr Russell’s evidence, during XIC on strategic matters that it was “very likely” that a fundamental issue may arise at stage 2 for this scheme.

¹¹¹ Ms Tilbrook XX by the Ramblers on strategic matters.

165. Finally, the timings documented on the RSAs for the site visits that were carried out by the auditing team are confounding to say the least. A number of objectors raised concerns that it was geographically impossible for so many site visits to be achieved in the time slots available, noting that in at least one instance the individual time slots given for back-to-back site visits would have required nothing less than time-travel.¹¹²

166. This raises reasonable doubts as to the adequacy of each site inspection and only further supports the Ramblers position that no weight should be placed on the RSAs.

Flaws in Mott MacDonald's approach to road safety

167. Furthermore, Mr Russell has raised a number of more general concerns about how Network Rail has considered the safety and permanence of those diversion that take users onto the road network.

(i) **Separation distances:** Mr Russell called for there to be a minimum separation distance between any flow of traffic and a pedestrian user. He calculated 1.25m as being a reasonable minimum, through combining the 0.75m measurement in Manual for Streets for a single pedestrian holding a stick and the 450-500mm for street furniture and to cater for vehicle wing mirrors. Ms Tilbrook disagreed that a minimum separation distance was appropriate. In a case where one of the key aims of the Order is to improve safety, it is alarming that Network Rail could not agree to the principle of a minimum separation distance between a person and traffic.

(ii) **Highway verges:** Mr Russell was also concerned that Network Rail and Mott MacDonald had not adequately checked and proven the ownership status of highway verges that are being used as part of the diversions. It is of course up to the applicant to do so. Mr Russell explained that the usual process, if seeking to use highway verge as part of a development, is to ask

¹¹² For example, Colchester Borough Council raised this issue during XX of Network Rail's witnesses for E41 Paget.

for this information from the highway authority and pay a fee. Mrs Baker, on behalf of ECC, stated that she would endorse Mr Russell's position here. She noted that her office receives 400 or so inquiries like this a month, with everything being logged on a system, but that they could not find any records of Network Rail doing so.¹¹³

In response Ms Tilbrook relied on both the presumption of ownership set out in the Open Spaces Society note¹¹⁴ and ECC's online resources that record ownership. However, the presumption is only a *presumption* that is rebuttable and the online resources include a very clear caveat in its terms and conditions that they are not to be relied upon in this way, indeed Mrs Baker explained that information on common land and village greens is not available on the map.¹¹⁵

Overall, the Ramblers are not satisfied that Network Rail has adequately proven and validated ownership of highway verge.

- (iii) **Future-proofing of rights of way:** Mr Russell further highlighted that for many of the proposals, a public right of way that exists on the definitive map and statement ("DMS") is being replaced by a diversion onto existing highways. There is a real risk here that these diversions will not be afforded the same levels of legal protection for NMU's rights in the future. This is because there is nothing to prevent future changes being made to the highway network that could cut off these diversions and, as Mr Russell explained in evidence, were such changes to be sought, there is a real risk that impacts on NMUs will be overlooked. Mr Russell was not advocating such an approach, but was simply noting the realities of what is likely to happen in practice.

This touches on a more general concern of the Ramblers that for many of the diversions, there will not be a replacement of "like for like" from the perspective of the DMS. This is because the current public right of way,

¹¹³ Mrs Baker XIC.

¹¹⁴ At appendix F of Ms Tilbrook's rebuttal to the Ramblers.

¹¹⁵ Mrs Baker XIC.

recorded with definitive status on the DMS, will be replaced with roadside walking and use of existing roads and the rights associated with the diverted footpath will, therefore, be subsumed within the rights of the greater carriageway.

Diversity Impact Assessments

168. The Ramblers submitted a note on the Public Sector Equality Duty Requirements and the DIA Documentation, dated 15 October 2018, which deals with the Ramblers concerns here. The same points will not be unduly repeated. In short, the Ramblers are unconvinced that Mott MacDonald has fully and objectively considered the impacts of the Order proposals on protected characteristics groups and, as a result, it is considered that “due” regard has not been had to the matters specified in section 149 of the Equality Act 2010 by way of the DIA process that has been undertaken to date.

Planning Policy

169. Similarly, the Ramblers have submitted a note, dated 14 December 2018, in Response to Network Rail’s Planning Policy Note which deals with the Ramblers position on the extent to which the proposed Order complies with planning policy. Again, the same points are not repeated here.

170. The Ramblers are grateful for Network Rail’s recent supplementary note on planning policy that provides further clarification of Network Rail’s position on how planning policies should be considered in the context of assessing this Order. However, the Ramblers maintain the position that Network Rail has not provided a robust analysis of (i) the extent to which the Order complies with relevant planning policies and (ii) where any conflict with policy exists, if/how that conflict is outweighed by other considerations.

171. Furthermore, on national policy, Mr De Moor provided insightful evidence early on in the Inquiry process about the significant public health benefits associated with walking, as an accessible form of physical activity. He made reference to a

number of documents showing the Government’s recognition of how important walking is. Most importantly, the Department for Transport’s own Cycling and Walking Investment Strategy 2017,¹¹⁶ demonstrates a national policy ambition to “make cycling and walking the natural choices for shorter journeys, or as part of a longer journey”.¹¹⁷

172. The Ramblers are objecting to 30 of the crossings in this Order on the basis *inter alia* that the diversions are not suitable for walkers and will discourage walking as a result. These proposals are, therefore, contrary to the Department for Transport’s own policy.

SECTION 5: CROSSING-SPECIFIC OBJECTIONS

General remarks

173. Each of the Ramblers’ crossing specific objections are dealt with below. For each of these crossings, the Ramblers do not consider that the proposed alternative routes are suitable and convenient replacements, nor that these alternatives justify the need to close the crossing.

174. In relation to each of the crossings, Ramblers volunteers gave evidence, drawing on their significant experience of the ROW network, both as walkers and as Ramblers secretaries and officers. They gave their evidence on behalf of the Ramblers as a whole.

175. Throughout the Ramblers evidence, calculations of the distances of a diversion were based on measuring the length of the diverted route from the points at which it leaves and re-joins the existing route. This is the standard approach to measuring distances for diversion under the HA 1980.

E02 Camps

¹¹⁶ Extracts can be found in the Ramblers general appendix 7.

¹¹⁷ Cycling and Walking Strategy, p. 7.

176. E02 is an important connector to a number of local destinations for walkers. Mr Naylor clearly explained both in his written and oral evidence how users can utilise E02 to reach the canal and Stort Valley Way to the north, as well as to link to the wider SSSIs in the area, Eastern mead and Hunstead mead. Mr Naylor, himself, is local to, and highly familiar with, the crossing, living less than 1 mile from it.¹¹⁸
177. In light of this local understanding, Mr Naylor's evidence should be preferred to that of Ms Tilbrook. It was concerning that Ms Tilbrook's proof stated there to be "no community facilities in the area" (at 2.2.1). In considering changes to the ROW network, and especially regarding ROW that provide for walking in the countryside, areas of natural beauty and interest, such as SSSIs and canals, must surely count as community facilities and it should be recognised that E02 is a direct link to these.
178. The proposed diversion for E02 is clearly unsuitable due to its illogical and lengthy route. It proposes to take users to either Sadlers or Wildes crossings, both of which create a "zig-zag" journey if people are walking northwards to the lock and beyond. Whilst the diversion over Sadlers is shorter, Mr Naylor explained that it is not a route he felt he could include in planning a walk.¹¹⁹
179. Mr Kenning fairly accepted, during cross-examination by the Ramblers, that "this route does seem a little bit odd" because it is replacing a north-south connection with an east-west route, but that it has been developed on the basis of feedback received.¹²⁰ Ultimately, the diversion is too long and inconvenient to be a sufficient justification to close the crossing.
180. Furthermore, the fact that a level crossing will remain for private use at E02 fundamentally undermines any "strategic" case for closure. The crossing will continue to be inspected and will still impact on the ability to bring about future enhancement schemes, or line speed increases (notwithstanding that the presence of

¹¹⁸ Mr Naylor XIC on E02. Mr Naylor also highlighted E02's historical value, noting that his father-in-law was walking here 90 years ago and used to go swimming in the canal.

¹¹⁹ Mr Naylor's proof at paragraph 9.

¹²⁰ In terms of feedback on the proposals, it appears from the wider OS mapping that the 1.5 mile marker for any leaflet drop on local residents would not reach far into Harlow. During cross-examination, Mr Kenning accepted that but stated that he believed Network Rail would have taken Harlow in. He had to accept, however, that he had no evidence to demonstrate that.

Sadlers and Wildes crossings in close proximity on either side of E02 would similarly impact on such schemes). As Mr Naylor stated in his proof, at paragraph 13, it seems illogical to continue vehicular use but extinguish the right of way on foot. This is especially so when it seems that the crossing furniture necessary for pedestrian access will need to remain at the crossing.

181. Moreover, users are simply being diverted to alternative level crossings. Apart from the technical “removal” of a public level crossing point at E02, there appears to be negligible safety benefits for users associated with this proposal.

182. Nor has Network Rail properly considered alternatives, thereby failing to provide a robust case for closure. According to Mr Fisk’s proof, a bridge at this site would only cost £475,000 (a much lower price than the normal costings). What is more, the telephone system will remain in place for private use. The Ramblers query why that telephone could not be made available for public use. With respect, Mr Kenning’s evidence, as to why this would not be achievable, was not easy to follow.¹²¹

183. Overall, the Ramblers consider that any additional costs required to maintain this public crossing point are clearly justified. Such investment would prevent the loss of this important and valued ROW.

E05 Fullers End

184. Network Rail’s proposals for E05 would result in the loss to the local community of a quick, easy and secure way of crossing the railway to access local services. It would also remove an important link in the wider ROW network. Mr Goffee explained how E05 connects to “lovely walks” via paths to the south and that he, himself, has visited it twice with a group of walkers.¹²²

¹²¹ Mr Kenning initially stated, during examination-in-chief, that a signaller receiving a call from a pedestrian (as opposed to somebody in a vehicle) would likely say that the pedestrian should follow the instructions at the crossing and make their own decision as to when to cross. But he later accepted, during cross-examination, that he could not say what the signaller’s response would be. He then referred to the economic costs and difficult of instructing the public to use the telephone noting that signallers have a script as to how to respond to vehicular users who call, but there is no procedure in place to deal with a pedestrian user.

¹²² Mr Goffee XIC on E05.

185. Again, Network Rail has failed to justify the need to close this crossing. Network Rail has invested considerable money (between £650,000 – £1.2 million) in installing an integrated MSL system, meaning that the crossing is an “active” crossing and, in Mr Fisk’s words, is “as safe as we can make it from technology”. It appeared from Mr Fisk’s evidence that most of this investment would simply be lost if this system was decommissioned (albeit some parts of the technology may be recyclable).¹²³
186. E05 is located in the rapidly-growing settlement of Elsenham and must be considered in this context. The crossing already experiences very high levels of usage (with around 400 recorded users over the 9-day census period) and, as Mr Kenning stated there is a “a lot of development happening in the area”.¹²⁴ Usage of this crossing can only be expected to increase. This is certainly not the time to close and divert this pedestrian access.
187. Seen in its local context, the proposed diversion is too long and dog-legged to be convenient. This is a crossing where an added 5 minutes to a journey (especially a “there and back” journey) really can make all the difference. Were this diversion to be implemented, there is a real risk that users will choose to get in the car instead (as Mrs Holmes put it, users are “much more likely to hop in the car and drive”). Clearly, this goes completely against the Government’s aim to encourage walking and cycling for shorter journeys.
188. What is more, there remain too many uncertainties as to what this diversion will actually look like on the ground. Firstly, in order to be suitable, the diversion would need to be accessible, but there are clear gradients to overcome in the approaches to the underpass. Mrs Holmes noted that people in mobility scooters use this crossing to get to the shops daily and Mr Goffee gave evidence that he has personally seen elderly people using it. Accessibility constraints are therefore an important consideration. Whilst Mr Kenning and Ms Tilbrook reiterated that they “believed”¹²⁵ and

¹²³ Mr Fisk’s response to the Inspector’s questions on E05.

¹²⁴ Mr Kenning XIC on E05. Mr Kenning’s appendices, tab 6, set out a number of local plan allocations including 40 dwellings (on land immediately to the north west of the level crossing) (p. 152 of the Regulation 18 Local Plan), 165 dwellings further to the north west of the level crossing) (p. 157) and 130 dwellings to the north east of the level crossing (p. 158).

¹²⁵ Mr Kenning XX by Mrs Holmes on E05 “...1 in 20 – believe it is achievable”.

“anticipated”¹²⁶ that they could achieve a gradient that was less steep than 1 in 20, Ms Tilbrook agreed in cross-examination that no site survey had yet been done, so she was simply relying on lidar data. Network Rail has not provided any guarantee as to the gradient that will be experienced by users were this proposal to be implemented.

189. Secondly, on lighting through the underpass, Ms Tilbrook recognised in cross-examination that it was a “key thing [that] there is lighting through the underpass”, but Mr Kenning accepted that there is no guarantee in the Order that such lighting will be delivered.¹²⁷

190. Thirdly, in terms of surfacing of the route, the assurances Ms Tilbrook gave in evidence that there would be compact surfacing along the full route are in no way guaranteed by the Order.

191. All in all, it is impossible for the Ramblers, or the Inspector, to properly assess whether this diversion will be suitable without further details and assurances on these matters.

192. Finally, Network Rail has not adequately considered whether a bridge or underpass may be possible at this location. Such a grade-separated solution would allow for a continued direct access point between the north and south sides of Elsenham. Mr Kenning gave evidence that such infrastructure would not be feasible, or would be difficult to fit at this location, but no plans or specifics were put forward to support this view.¹²⁸

E10 Dixies

193. The proposal for E10 is simply an extinguishment of the ROW that traverses it. The entirety of the “diversion” is on existing highway, all of which is available for use today. Network Rail’s census documents over 30 people using the crossing over the 9-day period. Each one of these users are choosing to use the crossing, instead of the

¹²⁶ Ms Tilbrook XIC on E05 “anticipate that [the] gradient we can achieve would be less steep than [8% or 1 in 20]”.

¹²⁷ Mr Kenning XX by the Ramblers on E05. Mr Kenning noted that essentially what will be delivered in terms of lighting will depend on what the Highway Authority wants.

¹²⁸ Nor do such considerations appear to have been factored into Network Rail’s decision to close this crossing through this Order.

“alternative route” - they must be deriving an added convenience from doing so. All such convenience will be lost if this proposal were to be implemented.

194. What is more, the local community of Newport would lose one of the few east-west connection points across the railway during a period of both current and planned growth in the area. Mr Kenning recognised that there is “quite significant growth”¹²⁹ on the west of the railway and the local plan extracts, included in tab 6 of his appendices provide further evidence of this fact. Concerns over the need to retain this pedestrian access point, within this context of growth, were clearly voiced by local people during consultation.¹³⁰

195. Applying Network Rail’s strategic case to E10, Network Rail is seeking to justify the loss of this pedestrian access point simply on the basis of the generic issues associated with level crossings across its entire network. No crossing-specific justification (in terms of safety risks, maintenance costs or impacts on operational efficiency) are being put forward. This cannot justify the permanent extinguishment of this ROW.

196. In any event, the “alternative route” is not acceptable. It is too long and, due to how it would be used in practice, it is too unsafe.

197. On length, Mr Goffee estimated, from his own experience of walking the route, it would take half an hour to complete the “diversion” one-way (meaning 1 hour for a “there and back” walk), including the time needed to cross roads. This is far too long to be a “convenient” replacement for users. Notably, Network Rail’s own DIA for E10 indicates that the additional length is not convenient and recommends the consideration of alternative solutions at the level crossing.¹³¹

198. Partly due to the considerable length of this diversion, the Ramblers – both Mr Goffee, based on his knowledge of local circumstances and Mr Russell, based on his experience in transport planning - think it likely that users will short-cut the suggested route by using Bury Water Lane. Ms Tilbrook fairly accepted that it would not be

¹²⁹ Mr Kenning XX on E10.

¹³⁰ See NR5 on pp. 124-5, consultation responses 1, 3 and 4.

¹³¹ DIA for E10 on p. 17.

appropriate to recommend this use of Bury Water Lane.¹³² At the eastern entrance to this road, the embankments on either side are high, making it difficult for users to take evasive action to avoid oncoming traffic.

199. The Inspector cannot be satisfied, from the information before him, that users will not use this common-sense short-cut, especially users who are unfamiliar with the area. The constraints on the eastern entrance are not easily appreciated for users approaching from the west. As a result, the proposal is not safe.

200. Furthermore, Mr Russell gave persuasive evidence as to why a crossing point is needed on Bury Water Lane. It would assist pedestrians in safely crossing the road, but it would also help to slow motorists as it would likely require build out on the side (either on one side or both sides) and may involve one-way working.¹³³ No such crossing facilities are proposed by Network Rail.

201. E10 serves as a valued connection in the ROW network.¹³⁴ Mr Goffee described it as an “extremely well used link”. Network Rail have not justified the need to extinguish this link and the suggested alternative is too long and unsafe to be fit for use.

E17 Boreham and E18 Noakes

202. The Ramblers case against E17 and E18 has a slightly different focus from other objections, due to the particular history and circumstances of these crossings. Both crossings are currently closed. E17 has been closed by way of a TTRO since around February 2016.¹³⁵ Mr Fisk thought that E18 had not been in situ since the early 1970s, albeit there has only been a TTRO formally in place since February 2013.¹³⁶

203. The Ramblers note here their concerns with the continued use of “temporary” TTROs to close level crossings for multiple years. The fact that the crossings are currently closed must not, in and of itself, feed into the case for closure here.

¹³² Ms Tilbrook XX on E10.

¹³³ Mr Russell’s oral evidence for E10.

¹³⁴ Enabling access for example to the Coach and Horses pub to the east of the railway.

¹³⁵ Mr Fisk XIC on E17.

¹³⁶ Mr Fisk XIC on E18.

204. It is fair to say that the onward walking route to the south of both crossings has been severed by the widening of the A12, so that it is not possible for users to connect via FP23 or FP24 with the ROW network to the south of the A12.
205. However, both E17 and E18 still provide north-south connection points. In a planning context in which plans are being developed to improve the A12 and there is a sizeable new development at Beaulieu Park to the north, it is premature to close both of these crossings and to simply replace them with a further east-west connection to the north of the railway line.
206. Network Rail have argued that closure of these crossings does not preclude a third party from seeking to re-establish a connection point (for example, a bridge) over the railway at this location in the future. But there is no guarantee that this will occur. And Mrs Evans explained that she was sceptical that this would be in a reasonable time and with a reasonable price tag.
207. These two crossings have had a history of bad planning, through the arrival of the A12 and the failure for north-south ROW links to be preserved at that time. The Ramblers urge the Inspector not to repeat the mistakes of the past but to recommend that these two crossings are left open. If the two crossings are closed, the historic north-south connection will be lost forever.
208. Without prejudice to the above, if the Inspector were minded to recommend the closure of these two level crossings, the Ramblers request that he recommend the retention of the footpaths leading to them from the north (marked in blue on the design freeze). This would, at least, make it clear that a historic connection point previously existed. It is noted that Mr Kenning fairly stated, during cross-examination that if the Inspector were minded to do this, he could see no reason why it could not be done.
209. Finally, Network Rail's case on the need for an alternative route for these crossings was far from clear. It seemed to be accepted that an alternative was needed, particularly as the highway authority would not accept an extinguishment.¹³⁷ However, in terms of Network Rail's strategic case - that it must provide an alternative means of

¹³⁷ "we were not going to get away with extinguishment", Mr Kenning XX by the Ramblers on E17 and E18.

crossing the railway in order to justify the closure of a level crossing - the east-west link provided in these proposals does nothing of the sought.

E19 Potters

210. E19 experiences reasonable levels of usage, notwithstanding its close proximity to the A12 to the south. Ms Tilbrook recognised that this crossing is used by local people¹³⁸ and Mr Hope made clear that people use the crossing every day¹³⁹ (indeed 20% of the 10 consultation responses to the round 1 consultation stated that they used the crossing daily¹⁴⁰). The crossing appears to have no specific safety issues, with sightlines well over the minimum requirements.¹⁴¹
211. The proposed alternative is unsuitable for two key reasons. Firstly, issues of flooding on the route have not been addressed and, secondly, the requirement to walk on Oak Road will deter people from using it.
212. On flooding, the Ramblers are concerned that the surface of existing footpath 48 is regularly boggy and waterlogged. As Mr Evans put it, “FP48 is – at the best of times – wet and boggy – not walkable”.¹⁴² Ms Tilbrook, who admitted that she had not been on site herself,¹⁴³ reiterated that if there are any problems with waterlogging, that this can be dealt with at the detailed design stage, mentioning the possibility of stone surfacing.¹⁴⁴
213. In response to questions by the Essex Local Access Forum (“ELAF”) as to what guarantee Network Rail could give that the waterlogging would be addressed, Ms Tilbrook noted that the level crossing cannot be closed unless ECC is satisfied that the diversion is suitable for use.¹⁴⁵ However, as currently worded, the Order requires certification of the *new* stretch of highway (running east to west on the northern side of the railway) before the crossing is closed. The problems of waterlogging exist on the

¹³⁸ Ms Tilbrook XX on E19.

¹³⁹ Mr Hope XIC on E19.

¹⁴⁰ Ms Tilbrook’s proof at 2.16.4.

¹⁴¹ Mr Fisk agreed in XX by the Ramblers on E19 that these sightlines were well over.

¹⁴² Mr Evans XIC on E19.

¹⁴³ Ms Tilbrook XX by the Ramblers on E19.

¹⁴⁴ Ms Tilbrook XIC on E19.

¹⁴⁵ Ms Tilbrook XX by ELAF on E19.

existing footpath FP48. Even if the highway authority did need to certify the entire alternative route, including existing footpaths, this is, of course, no legal guarantee that they will require the waterlogging to be addressed.

214. In short, the Inspector cannot be satisfied, on the basis of the information before him, that the alternative route is suitable, having regard to the flooding on FP48.

215. What is more, the alternative route requires users to walk on Oak Road. This is not suitable, and it certainly is not convenient. Ms Tilbrook recognised in cross-examination that there are relatively high levels of vehicles using this road as it links onto the A12 and that the existing priority system recognises there is an issue here that needs to be addressed in terms of being a pinch point.¹⁴⁶ Road walking is noisy, it exposes walkers to traffic pollution and it increases the likelihood of accidents involving pedestrians and vehicles.¹⁴⁷ What is more, users may perceive this route to be unsafe which could dissuade them from using it.

E20 Snivellers

216. As explained in Mr Evans' proof, E20 has historical significance as a north-south connection point predating the railway line. Today, it is well used, even being promoted in Kelvedon Parish Council's local walks. Whilst Network Rail's design freeze does not show the alternative route (in orange) linking up to the southern side of the crossing, it is understood that users use this southern part of Snivellers' lane to link up with walks including to the east.

217. Network Rail have not justified the need to close this level crossing. On safety risks, Mr Evans gave clear evidence that he considered visibility along the railway line to be "vastly superior" than along Crabbs Lane.¹⁴⁸ Any comparison of the photos in Mr Evans' proof on E19 at paragraph 13 and Mr Fisk's proof on pp. 87-9 will support this point. The sightlines at the level crossing are clearly compliant and there have been no reports of poor use behaviour or misuse.

¹⁴⁶ Ms Tilbrook XX by the Ramblers on E19.

¹⁴⁷ Mr Evans proof of evidence on E19 at paragraph 10.

¹⁴⁸ Mr Evans XIC on E20.

218. The alternative proposed by Network Rail only provides another east-west link to the north of the railway. It does not provide a replacement north-south crossing point, other than the crossing point at Crabb's Lane which already exists for users today.

219. Furthermore, the Ramblers see Network Rail's proposals for E20 as unduly premature in light of current plans to upgrade the A120. Mr Evans submitted a plan to the Inquiry showing ECC's preferred route for this scheme, illustrating how pedestrian routes have been factored in. There is a real risk that, were the crossing to be closed through this Order, the existence of a historical north-south connection point at this location will be overlooked when the A120 scheme moves forward. Highways England, who are expected to promote the A120 scheme, would likely consider what pedestrian linkages can be justified, having regard to what currently exists at the time. That is why it is important not to prematurely sever this north-south link.

220. As put by Mr Evans, it is reasonable to expect Network Rail to wait for the outcome of this type of project having regard to the public health implications associated with walking.¹⁴⁹ Network Rail is unnecessarily jumping the gun by seeking to use this Order to prematurely close this connection point in circumstances where the crossing is not unsafe, there appear to be no planned enhancements on this stretch of line and the crossing is being regularly used by local people.

E26 Barbara Close

221. E26 currently experiences reasonable levels of use, by any account. Initially around 90 users were documented over the 9-day census period, but following a further review of this data an additional 24 people were found to have used the crossing on Saturday 23 July 2016 (including 6 children) with an additional 5 people using it on Sunday 24 July 2016.¹⁵⁰ Usage levels are not restricted to the weekends but vary throughout the week.

222. Whilst there is no mention of it on the design freeze map, Network Rail now recognises that permission has been granted, and implemented, for a significant

¹⁴⁹ Mr Evans XX on E20.

¹⁵⁰ See Network Rail's Note regarding Census Data at E26 – Barbara Close (NR-165).

development of 600 houses and a local school to the south-west of the crossing. This south-westerly extension of Rochford, including the provision of local facilities, can only be expected to increase usage of the level crossing, as an important pedestrian access point for this growing local community.

223. In such circumstances, it cannot be justified for Network Rail to close this level crossing and extinguish the ROW over it. Similar to E10, this proposal is not a “diversion” but a straight extinguishment, which Network Rail seeks to justify simply on the basis of the generic, and far-removed, “strategic” benefits associated with level crossing closure. The entirety of the alternative route set out on the design freeze map is available for use today.¹⁵¹ The only proposed improvement to this route was the upgrading of footway on Ironwell Lane, but this has now been delivered by the above-mentioned development.

224. Furthermore, this was a crossing for which Network Rail’s own case was particularly unclear. Ms Tilbrook stated that an “alternative route” was deemed required for this crossing due to the current levels of usage. She argued that because some improvements to existing highway had been proposed, she did not consider this to be an extinguishment. In contrast, Mr Kenning accepted during cross-examination that this was an extinguishment.

225. Ultimately, the reality is clear. From a ROW’s perspective, this is a straight extinguishment of legal rights with no genuine “alternative route” being provided. Those using the crossing must be deriving a benefit from doing so. If the Order is made, and this proposal is implemented, that benefit will simply be lost.

E28 Whipps Farmers

226. E28 is an actively used¹⁵² north-south connection point, linking users to West Horndon or to Ockendon and onwards to Bulphan. FP178 provides peaceful walking conditions with open views across the countryside. The proposed alternative is not an adequate replacement because it is too long and it is unsafe in various respects.

¹⁵¹ As accepted by Mr Kenning during XX by the Ramblers on E26.

¹⁵² Mr Bird gave evidence that the crossing is used by the Ramblers for group walks, as well as for solo walks.

227. Approaching from the south of the railway, Network Rail's proposals divert users along St Mary's Lane. Both Mr Russell and the RSA auditing team raised concerns with road-side walking here due to intermittent and insufficient verge. Mr Russell estimated that the relevant section of St Mary's Lane (located where the road bends around a row of houses) would take around 7-8 minutes to walk.¹⁵³ This would be an intimidating experience for pedestrian users, particularly those who may be less able to hear oncoming vehicles.
228. Whilst this issue could easily be addressed by the provision of a footway or through guaranteed verge clearance and maintenance, it seems Network Rail (somewhat bizarrely) does not think that would be justified because, in reality, users will not need to use this part of Network Rail's proposed diversion because Puddle Dock level crossing, to the east of E28, will remain open.¹⁵⁴ Notwithstanding that this position rests entirely on an assessment of users' origins and destinations (for which the Inspector has no data), it completely contradicts the documentary evidence underlying this proposal which clearly routes users to use this section of St Mary's Lane. Nor could Ms Tilbrook rely on any RSA findings to support her position as the RSAs had not re-assessed the route with Puddle Dock remaining open.
229. Moving on from this section of the route, users are expected to walk all the way along St Mary's Lane and the B187 to the connection with FP177, including having to cross the B187 at a point which Mr Russell described as very busy and near to a mini roundabout where opportunities to cross would be very limited.¹⁵⁵ No central refuge island is proposed for this crossing point, contrary to Mr Russell's recommendations.
230. Both Mr Russell explained that, in these circumstances and having regard to what a walker can see ahead on Wharley Street to the west vs Wharley Street to the north, walkers would be likely to short-cut via Wharley Street running northwards and over Wharley Street bridge. Mr Bird raised the same concern. Network Rail agree that this part of Wharley Street is not safe for pedestrian use.¹⁵⁶

¹⁵³ Mr Russell's proof at paragraph 4.71.

¹⁵⁴ Ms Tilbrook XIC on E28.

¹⁵⁵ Mr Russell XIC on E28.

¹⁵⁶ For the avoidance of doubt, although Mr Russell proposes solutions to the lack of verge walking on St Mary's Lane and a central refuge island to assist crossing the B187 to reach FP177, because he considers that users will use this short-cut, he recommends objection to this proposal even if these solutions were to be implemented.

231. In addition, Network Rail's proposals require users to cross Wharley Street to the north of the railway. There is insufficient detail on the proposals for this crossing point to assess its safety for pedestrians and, in particular, whether pedestrians will have sufficient visibility of the road and approaching vehicles. Mr Bird, on behalf of the Ramblers, provided a user perspective, noting that he found this to be an extremely busy road and crossing can be quite a daunting experience.¹⁵⁷

232. The Inspector asked Mr Russell whether there was any guidance on how far back from the edge of the carriageway a pedestrian should stand to safely look along the carriageway for approaching traffic. In a note submitted to the Inquiry on 4 February 2019, Mr Russell explained that he considered the DMRB guidance, more specifically table 3.3 of TA90/05 of the DMRB, to be applicable due to the fact that he considers the volume and speed of traffic to be characteristic of a road to which the DMRB should be applied. Following table 3.3, the preferred distance between a pedestrian and the edge of the carriageway is 2m; the acceptable distance is 1.5m.

233. Overall, due to the significant length of this diversion and all of the safety concerns referred to above, the Ramblers maintain their objection to E28.

E29 Browne and Tawse

234. There has unfortunately been a history of unlawful obstruction of FP39 to the north of E29. However, the path remains a valuable part of the ROW network. The proposed alternative route for E29 is simply not safe enough. It requires pedestrians to use the narrow hump back bridge on Childerditch Lane which does not have sufficient visibility.

235. Ms Tilbrook accepted that the visibility requirements for DMRB could not be achieved,¹⁵⁸ but emphasised that users would be brought up onto the bridge in and around the crest, which would improve visibility. No plans have been put forward to show to the Inspector where exactly pedestrians will be "brought up" onto the bridge

¹⁵⁷ Mr Bird XIC on E28.

¹⁵⁸ Ms Tilbrook XIC on E29.

in this manner, so it is impossible for either the Inspector, or interested parties, to consider this further.

236. As Mr Russell put it, "...because of the visibility restrictions here I would expect to see a plan that identifies where [the] area [is] so visibility can be audited to see if it is possible...in a situation like this I would present a design visibility envelope – either a topographical survey or a vertical visibility envelope – or go out with a representative of the Highway Authority and a ranging pole [and see what we can see]".¹⁵⁹ The Inspector does not have this level of detail before him.

237. For this crossing, not only is the DMRB standard not met, but according to Network Rail's *Note regarding visibility and steps at Crossing E29 Browne and Tawse*,¹⁶⁰ visibility has been calculated ignoring the Manual for Streets reference point of 600mm (which is designed to ensure that small children could be seen). In this regard, the less onerous Manual for Streets visibility requirements cannot be met either.

238. It is deeply alarming that Network Rail is prepared to accept such restricted visibility, relying in part on the fact that no unaccompanied children were picked up on the one-off 9-day census at E29.¹⁶¹ Mr Russell was clear that the 600mm height marker is always appropriate.

239. Network Rail's general approach to assessing visibility on the roads was extremely concerning. During the course of the Inquiry, Ms Tilbrook increasingly placed reliance on references to the highway code stopping sight distances in the Assessments of Walking Routes to School document.¹⁶² This simply has a one-off reference to the Highway Code's stopping distances on p.10¹⁶³ which must be read in the specific guidance context of the document. Ms Tilbrook made no reference to this document in her written evidence. With respect, by increasingly using it during oral evidence, she appeared to be clutching at straws.

¹⁵⁹ Mr Russell XIC on E29.

¹⁶⁰ NR-152.

¹⁶¹ See Network Rail's note on visibility (NR-152), paragraph 4.

¹⁶² This is a document submitted to the Inquiry by ECC because it was used as part of ECC's assessment of the alternative routes' safety.

¹⁶³ Where it simply states:

If a road needs to be crossed the visibility at the location should allow a vehicle to stop, given the 85%ile speed (the speed at which 85% of the vehicles travel below) of the traffic flow. Vehicle stopping distances should be taken as those given in the Highway Code." (Emphasis added.)

240. What is more, the highway code sets out the least onerous visibility requirements, namely, the stopping sight distances if a driver were to carry out an emergency stop. Mr Russell was adamant that the highway code distances are never used to design highways.¹⁶⁴ Mr Burbridge, also a highly-experienced transport planner, agreed - he has never used it when designing roads and bridges.¹⁶⁵

241. Needless to say, Network Rail's position here is in stark contrast to its approach to sightlines at its level crossings. Furthermore, it seems that the RSAs have not assessed any need to cross the bridge. They appear to assume that pedestrians will walk along one side of the bridge,¹⁶⁶ which accords with the "blue route" at the stage they were carried out.¹⁶⁷

242. Mr Russell put forward a proposed solution to the visibility restrictions over this bridge. He suggested a priority working system for traffic, which would require some kind of narrowing of the carriageway. Mr Russell agreed that this narrowing could also be designed to assist pedestrians to cross the road.¹⁶⁸ Without such reasonable safety mitigation, Mr Russell was clear that he would recommend that the Inspector refuse Network Rail's proposal.

243. Furthermore, from a user perspective, Mr Bird said that to deliberately expose himself to vehicles, including HGVs, possibly travelling 40+ mph is "more than daunting – it is a terrifying prospect".¹⁶⁹ He would advise against the use of this route for group walks because it is unsafe.¹⁷⁰

244. The proposed alternative is also too long and inaccessible. From Network Rail's note¹⁷¹ it seems likely that 63 steps will need to be navigated – 33 on the north east side and 30 on the south east side – clearly limiting access for users with mobility issues. Mr Bird had reasonable concerns that wooden steps – as indicated in the design freeze – risk becoming slippery in wet conditions.

¹⁶⁴ Mr Russell XIC on E29.

¹⁶⁵ Mr Burbridge XIC on E29.

¹⁶⁶ See p. 16 of the Response Report in NR16 at 2.37.1.

¹⁶⁷ See the second map for E29 included in Appendix A of the Response Report.

¹⁶⁸ Mr Russell in response to the Inspector's questions on E29.

¹⁶⁹ Mr Bird XIC on E29.

¹⁷⁰ Mr Bird XIC on E29.

¹⁷¹ NR-152 at paragraphs 13-14.

245. Overall, Network Rail have not shown any specific need to close this crossing. In terms of safety, it is relatively low risk (ALCRM score of C9), with sightlines well over the required minimum. To divert users from this setting to the hump back bridge on Childerditch Lane, without any proposed safety mitigation, is utterly unreasonable. Those users will experience a much greater safety risk, albeit on infrastructure that Network Rail would no longer be responsible for.

E30 Ferry and E31 Brickyard

246. These two crossings should not be closed by way of the diversion proposed by Network Rail. If closure of these crossings is sought, then either a bridge should be constructed or only one of the crossings should be closed, with the other one left open.

247. These access points have considerable value for the local community. They serve to connect users from the south, and in particular Canvey Island, directly into the extensive Country Park to the north. They also serve as a wider north-south connection to the ROW network, with routes stretching out into the surrounding marshes.

248. Their value to the community is borne out from the census information provided by Network Rail. E31 was used by 110 pedestrians over the 9-day period, but there was a particularly high number on Saturday 9 July 2016, with 36 users being recorded. Whilst Mr Kenning suggested, during cross-examination, that this figure may have been due to an event, there is no evidence to support that and Ms Tilbrook fairly accepted that this was not necessarily the case.¹⁷² Of course, it may simply illustrate active use by the community to access the park on the weekend.

249. What is more, whilst E30 has been closed since 2014, Network Rail's statement of case, on p. 105, notes that prior to its closure it experienced an estimated 189 users a day (at a time when E31 would also have been open). Even if that figure applied to a 9-day period, that is still a considerable level of use.

¹⁷² Ms Tilbrook XX on E30 and E31.

250. All parties were agreed that the Country Park is a key destination. Mr Bird referred to the park's "fantastic facilities" and Mr Lee, on behalf of ECC, stated that "it is an incredible resource – not just for the area but more regionally as well".¹⁷³ Mr Bird also highlighted the value of the marshes in the surrounding areas to the south of the railway line for longer walks. The importance of this pedestrian connection point (across both of these level crossings) cannot, therefore, be overstated.
251. Once the use of this connection point is appreciated, it will be apparent that the proposed diversion is entirely unsuitable. Ms Tilbrook accepted, during cross-examination by ECC, that there is a "clear origin" from Canvey Island. For people approaching the crossing from Canvey Island there is no alternative crossing point of the railway to the east of Canvey Road.¹⁷⁴ Any users originating from this location will need to undertake the full diversion – an estimated extra 10-15 minutes one-way (20-30 minutes for a "there and back" route).¹⁷⁵ Due to its dog-legged nature, the diversion would take users completely out of their way, if they are travelling to the Country Park from the south.
252. What is more, the majority of this diversion is in an urban setting, alongside a busy road, through an underpass and the station car-park. In Mr Bird's words, the diversion is "totally different" to what is existing.¹⁷⁶ He explained that the station here can seem like a "mini Liverpool Street station" in terms of its hustle and bustle, noting that it is surprising how busy the underpass is at every time of day.¹⁷⁷
253. It is the overall combination of the added length, change in scenic quality and dog-legged nature of the diversion that makes this route unsuitable and inconvenient. The Ramblers would add that the DIA for E30 appears to have significantly undervalued the impacts that this proposal may have on persons with protected characteristics.

¹⁷³ Mr Lee XIC on E30 and E31.

¹⁷⁴ Accepted by Ms Tilbrook during XX by the Ramblers on E30 and E31.

¹⁷⁵ Mr Bird estimated in his evidence that the diversion would be 13 minutes one-way for E30 and 16 minutes one-way for E31.

¹⁷⁶ Mr Bird XIC on E30 and E31.

¹⁷⁷ Mr Bird XX on E30 and E31.

254. If Network Rail considers that one or both of these crossings needs to be closed for safety reasons (the Ramblers note that both crossings are currently closed by TTROs due to insufficient sighting) then the following options should be pursued:

- (i) **Permanent closure of only one of the crossings, with the other remaining open:** E30 and E31 are in close proximity to one another. Due to how Network Rail has linked these proposals together with a shared diversionary route through the car park, it appeared from Mr Kenning's evidence that it would not be possible to close only one of the crossings because the fencing associated with the diversionary route through the car park would prevent sufficient sighting from being achieved at the remaining crossing.¹⁷⁸ But if only one crossing were to be closed, surely the "alternative route" would be via the remaining crossing. No diversion through the car park would then be necessary, nor the fencing associated with that.

Furthermore, whilst Mr Kenning gave quite extensive evidence at the Inquiry on the signalling complications at this site, Network Rail has not clearly demonstrated that active technology, such as MSL, could not be possible if only one crossing remained.

- (ii) **Bridge:** alternatively, if it really is necessary to close both of these crossings on safety grounds, then replacement infrastructure should be installed such as a bridge. Due to the nature of this "strategic" project, Network Rail has not properly assessed such a grade-separated solution at this stage. There is no comparative CBA for the specifics of this project between closure via diversion and closure via a bridge. Nor is there any assessment of the CBA scores for a bridge as a joint solution for both crossings (even the CBA scores in Mr Fisk's proof deal with each crossing separately). Mr Fisk accepted in cross-examination that if a combined CBA score were to be calculated it would increase.¹⁷⁹

¹⁷⁸ Mr Kenning RIX on E30 and E31.

¹⁷⁹ Mr Fisk XX by the Ramblers on E30 and E31.

255. In this regard, the Ramblers draw attention to section 48 of the TWA. According to subsection (1):

(1) This section applies where—

(a) a public right of way over a footpath, bridleway or restricted byway crosses a railway or tramway otherwise than by a tunnel or bridge,

(b) the operator¹⁸⁰ of the railway or tramway has made a closure or diversion application in respect of the crossing, and

(c) in the opinion of the Secretary of State the crossing constitutes a danger to members of the public using it or likely to use it.

256. Under subsection (8), a “closure or diversion application” includes an application made under section 6 of the TWA. Subsection (2) provides:

The Secretary of State may by order require the operator to provide a tunnel or a bridge, or to improve an existing tunnel or bridge, to carry the path or way over or under the railway or tramway at or reasonably near to the crossing to which the closure or diversion application relates.

The Secretary of State, therefore, can order Network Rail to provide a bridge to replace a level crossing if he is of the opinion that the crossing constitutes a danger to users.

257. This provision relevant and applicable to the situation at E30 and E31, as Network Rail do appear to have crossing-specific safety concerns with these two crossings.

258. However, it should be noted that subsection (4) of this section imposes a 2-year deadline on any such order being made, with time running from the “day on which the closure or diversion application is made”. Unfortunately, therefore, as Network Rail’s application for the Order was deposited in late March 2017, the deadline is due to expire in March 2019 – limiting the availability of the section 48 powers for these proposals.

E33 Motorbike

¹⁸⁰ Defined in subsection (8) as: “in relation to a railway or tramway, means any person carrying on an undertaking which includes maintaining the permanent way.”

259. The Ramblers consider that this crossing serves as a key north-south connector between Vange and its surrounding area and the scenic marshes and RSPB nature reserve. The existing route is quick and it is direct. By contrast, the proposed diversion is convoluted and unattractive, taking users alongside industrial units to the northern side of the railway line and requiring them to cross the busy Pitsea Hall Lane twice.
260. Crucially, the question is not whether the diversion will enhance east-west connections or improve connection points for visitors to the RSPB reserve arriving by car. Those are unlikely to be the groups currently served by the level crossing. The real question is whether it provides a suitable diversion for those using the crossing. As Mr Bird, on behalf of the Ramblers, made clear, to consider this, the Inspector should consider the impact on users travelling north-south.
261. Ms Tilbrook accepted in cross-examination that if a user approaches the crossing from Vange to the north, she will need to walk the full diversion of 900m.¹⁸¹ That is around 25 minutes one way, factoring in the time needed to cross Pitsea Hall Lane; an additional 50 minutes (almost an hour) for a “there and back” walk.
262. Ms Tilbrook also recognised that there were “probably some shorter walks – people using local access – there and back – immediately to [the] north and north east”¹⁸² however during re-examination, when questioned about the biggest impact being on people living in Vange, she noted that there were a “limited number of people in close proximity to the level crossing”. It is impossible for Ms Tilbrook to know what proportion of users are using the crossing from Vange without any origin and destination surveys.
263. Mr Bird’s evidence was clear. For those travelling in a north-south direction, the diversion would present a major obstacle and will put people off.¹⁸³ He has direct experience of the route, having used it on several occasions. What is more, he explained how he had spoken to local people whilst in the process of using the route, referencing a dog walker who was ambling across the marshes.¹⁸⁴ In Mr Bird’s view, the route

¹⁸¹ Ms Tilbrook, cross-examination by the Ramblers on E33.

¹⁸² Ms Tilbrook, evidence-in-chief for E33.

¹⁸³ Mr Bird XIC on E33.

¹⁸⁴ Mr Bird XIC on E33.

would be used by people to keep fit, walk dogs and for general leisure purposes. He does not consider the alternative to be suitable for these users.

264. Finally, Mr Bird highlighted safety concerns associated with Pitsea Hall Lane. Network Rail provided no details as to what type of crossing would be installed at the location near to the “S-bend” (to the south of the Pitsea Hall road level crossing). The design freeze plan simply states: “crossing point to be provided”. The design guide (NR12) on p. 24 has a picture of a “tactile crossing example” that clearly shows a zebra crossing but Ms Tilbrook informed the Inquiry that there was no intention to put a zebra crossing in place here. Mr Bird explained that there were blind spots at this point where a pedestrian could not see vehicles around the corner – this is in a context where large HGV vehicles use the road. He was worried about group safety and ultimately concluded that there was a higher safety risk using Pitsea Hall Lane than E33. In his words, “I’d far rather cross E33”.¹⁸⁵

265. The fact that users, like Mr Bird, may perceive an additional safety risk on the alternative route, further supports the Ramblers case that it is not acceptable.

E35 Cranes No. 1

266. The Ramblers position on E35 is straightforward. Network Rail has not demonstrated that use of the underpass through the golf course will be suitable.

267. Clearly, any alternative route will need to be suitable all year round (at least to the same standards as the existing route). Mr Evans’ evidence, both at the Inquiry and by way of photographs in his proof, clearly shows that there is a drainage/flooding issue at present. This will be apparent on site. Mr Evans, in response to the Inspector’s questions, also noted that due to the restricted height of the underpass, people will have to duck who are over 5’9.

268. Network Rail was unable to explain what was causing the drainage issues. Nor, who exactly would be responsible for maintaining the underpass and regulating the drainage to allow for continued use in the future. Ms Tilbrook seemed to accept that

¹⁸⁵ Mr Bird XX on E33.

this could be complicated as the structure was a Network Rail structure, the surface of the ground was the responsibility of ECC but the drainage connects to the golf course.

269. It is baffling that Network Rail has not properly assessed the issues at this site considering that they are seeking statutory powers to permanently divert a right of way underneath this structure. Whilst Mr Kenning asserted that “there should be a means of getting water away”,¹⁸⁶ he did not know if there is an existing culver there,¹⁸⁷ and Network Rail has failed to provide any surveys/documentary proof to show how drainage will be dealt with. Without this, it is impossible for the Inspector to recommend that the route will be suitable.

270. Furthermore, Mr Evans noted that visibility is limited looking towards the north-east through the underpass and that this raises a concern for groups of walkers who will need to navigate around golf buggies. This reduces the convenience of using the route. The Ramblers also have concerns that the route could become slippery, on approaches to the underpass, when conditions are wet.

E37 Essex Way

271. The proposed alternative route for E37 is not suitable, primarily because it will be prone to flooding, both at the underpass and on the stretch of new footpath running alongside the river to the south of the crossing.¹⁸⁸ Nor do the Ramblers consider that the quality of the walking experience – in terms of scenic views – is comparable to the existing route.

272. In Mr Evans’ words, the whole area of field near to the river was “damp, soggy and very difficult”.¹⁸⁹ It is not suitable land on which to permanently place a footpath. The Ramblers are concerned here with *surface* water flooding, as opposed to *river* flooding. Ms Tilbrook has not provided sufficient evidence to demonstrate that surface water flooding will not be an issue.

¹⁸⁶ Mr Kenning XIC on E35.

¹⁸⁷ Mr Kenning in response to the inspector’s questions on E35.

¹⁸⁸ The Ramblers are also concerned that the river will move over time and “swallow” the footpath as a result, as stated by Mr Evans in XIC on E37.

¹⁸⁹ Mr Evans XIC on E37.

273. In terms of the underpass, Mr Kenning assured the Inquiry, that it was Network Rail's understanding that standing water could be prevented,¹⁹⁰ and that in terms of water flowing downhill, this should not need an engineering solution.¹⁹¹ However, this has certainly not been proven, and there is insufficient evidence before the Inspector to allow him to make a recommendation on whether the route will be suitable.
274. Again, Ms Tilbrook emphasised that if, at detailed design, there was a need for surfacing work to address flooding concerns, this could be done at that stage. However the Inspector noted that the design freeze does not indicate that any work is needed in this regard. Indeed, the design freeze map for this crossing fails to even show the presence of a watercourse to the north. From this, the Inspector cannot be confident that Network Rail has properly assessed the feasibility of its proposals.
275. In terms of access to the underpass, again Network Rail failed to provide the necessary details. There is a clear height difference that will need to be surmounted. Ms Tilbrook indicated, during examination-in-chief, that steps might be required, along with some regrading. Nothing of the sort is indicated on the design freeze plans.
276. In terms of scenic quality, Mr Evans gave evidence that the views simply do not compare to the existing route. He explained that users have "a beautiful view across the river and farm to Notley" on the existing footpath.¹⁹²
277. In summary, there are insufficient details to properly assess the suitability of the alternative route but, on the basis of the current proposals, the Ramblers do not consider the route to be adequate.
278. It is notable that E37 is a crossing for which the sightlines are "way over" the minimum requirements and there have been no incidents of misuse.¹⁹³ Mr Fisk accepted in cross-examination that MSL could work and there appear to be no specific plans to increase line speeds through this crossing in the near future. There is no need to close this level crossing.

¹⁹⁰ Mr Kenning XX by SJR Farming on E37.

¹⁹¹ Mr Kenning XX by the Ramblers on E37.

¹⁹² Mr Evans XIC on E37.

¹⁹³ Mr Fisk XX by the Ramblers on E37.

E38 Battlesbridge

279. Whilst key information on the details of the proposals for E38 is still lacking, it is readily apparent that the alternative route is not suitable and convenient. The diversion requires users to navigate a lengthy and convoluted detour, including the need to surmount and demount 120 steps and walk alongside the incredibly busy A1245.

280. Firstly, regarding steps, the Ramblers consider that the accessibility constraints on the alternative route are considerable and will put off users from walking it. The lack of, and inaccuracy of, details on the proposals for steps at E38 was astounding. The design guide and design freeze simply stated “Proposed 2m wide steps Type S2 up the embankment”, with Type S2 being referred to as “Timber board steps” on p. 32 of the design guide (NR12). Ms Tilbrook, however, made clear that the material that they are fabricated from would need to be to the satisfaction of the Highway Authority and they may want concrete material.¹⁹⁴ She also noted that they would probably be 1.2m wide, not 2m wide.

281. Moreover, in order to assess the impact that these steps will have on users it is vital to know how many steps there would be, yet Mr Kenning was unable to answer this point. Ms Tilbrook later explained that it is likely to require around five flights of 12 steps, with four intermediate landings, on one side and five flights of 11 steps on the other.¹⁹⁵ She indicated there would need to be a change of direction as there would be a limit on the number of steps that could continue in a straight line.¹⁹⁶

282. Ms Tilbrook emphasised that these steps would be designed to the standards of inclusive mobility, but there is no legal guarantee from the Order (and certainly not from the design guide or design freeze information, or from Ms Tilbrook’s proof that fails to mention the inclusive mobility requirements) that this promise will be delivered.

¹⁹⁴ Ms Tilbrook XIC on E38.

¹⁹⁵ Ms Tilbrook XIC on E38.

¹⁹⁶ Ms Tilbrook XIC on E38.

283. Mr Lee perhaps put it best when he stated that on hearing this information his “jaw did sort of hit the desk”.¹⁹⁷ He explained he had no inclination that there would be five flights of steps.¹⁹⁸

284. Clearly, the imposition of 120 steps onto a diversion will severely restrict accessibility for use by the general public, particularly those who are elderly or have any mobility constraints. As Mrs Evans stated, “there’s just no comparison in terms of convenience” between the current number of steps on approach to the crossing and what is being proposed.¹⁹⁹

285. It was apparent from Mr Kenning’s answers that Network Rail has failed to appreciate these accessibility constraints. At one point, he noted that the existing route requires considerable cross-field walking, indicating that those who are able to navigate this will be able to deal with the steps - a concerning assumption to make on accessibility on the ROW network.

286. Secondly, the Ramblers have safety concerns regarding this route. There was considerable discussion at the Inquiry on what Network Rail is proposing to do to the vehicle restraint system (“VRS”). It is now clear that pedestrian users will be routed to walk in between the VRS and moving traffic. Again, details on how the VRS will be amended are lacking, preventing the Inspector from being able to conclude on its suitability.

287. Indeed, Mr Russell had to further clarify his position on this crossing once he understood what was really being proposed.²⁰⁰ He explained that he had assumed from the design guide materials, which stated simply “Existing vehicle crash barrier to be amended” that Network Rail would be providing some form of protection between pedestrians and traffic – whether that was to ensure a physical barrier in the way of the VRS itself (with pedestrians on one side and vehicles on another) or to have sufficient separation distance between cars and people (even if both were on one side of the VRS). Mr Russell fairly assumed that there would be such a guarantee of protection here.

¹⁹⁷ Mr Lee XIC on E38.

¹⁹⁸ Mr Lee XIC on E38.

¹⁹⁹ Mrs Evans XX on E38.

²⁰⁰ See Technical Note 02 - Note on Mr Russell’s revised position on E38 following evidence presented to Inquiry.

288. Ultimately, what Network Rail is proposing – with no formal guarantee that there will be this type of protection for users – was so concerning from a safety perspective that it had not been considered by Mr Russell as a possibility (Mr Russell: “it never crossed my mind for a second that you would divert a pedestrian along a road like this without a protection – need protection – whether physical barrier or a separation distance”).

289. Network Rail submitted a written response to Mr Russell’s Technical Note on this evidence (NR-160). This states, at paragraph 2, that the DMRB guidance *TA90/05 The Geometric Design of Pedestrian, Cycle and Equestrian Routes* “provides specific guidance for [NMUs] off carriageway routes associated with trunk road or motorway improvement schemes, and therefore is not specifically relevant for the introduction of a pedestrian route on a local ‘A’ road.” The Ramblers disagree. DMRB is applicable to local roads that have similar characteristics as the trunk road network and/or at the discretion of the highway authority. Notably, ECC, as the relevant highway authority, are following DMRB guidance (TD19) in their assessment of this proposal, indicating that they consider DMRB to be the appropriate design standard for this road.

290. Furthermore, Network Rail’s response emphasises, at paragraphs 5 and 7, that the proposal will be further assessed at detailed design, when Stage 2 RSAs will be carried out. The Ramblers consider that whilst the details of the barrier, and its exact location, is a matter of Stage 2, there needs to be an assessment at Stage 1 that a safe and suitable solution can be achieved.

291. Ultimately, it is clear from the evidence heard at the Inquiry that the alternative route is not safe enough from a user perspective. Mr Corbyn, on behalf of ECC, stated on multiple occasions that he “wouldn’t choose this as a walking route” noting that a motorist would not expect to see somebody walking along these verges.²⁰¹ Mr Lee stated: “as a parent, would I take my son walking along [the] proposed section like that? Not unless I have to”.²⁰² And Mrs Evans, when asked if she would choose to walk this route answered “no I would not”.²⁰³ These are three able-bodied witnesses saying that they simply would not use the route.

²⁰¹ Mr Corbyn XIC on E38.

²⁰² Mr Lees XX on E38.

²⁰³ Mrs Evans XIC on E38.

292. The ROW traversing E38 is a valued east-west connection point in this area of Essex. Mr Lee was very fair to note in his evidence that the highway authority was responsible somewhat in not previously paying this path the attention that it deserves²⁰⁴ but noted that although it has relatively low usage data on the Network Rail census, it is important to walk.²⁰⁵ The Ramblers agree. Network Rail's proposals will effectively result in a loss of this connection point and a loss to the ROW network.

293. There is no need to close this crossing – it is not high risk, the sightings are way over the minimums, there have been no reported incidents, there are no plans to double-track the line any time soon,²⁰⁶ nor to increase the line speed.²⁰⁷ From a safety perspective, it would seem to any reasonable observer that users are less safe on the diversion than on the existing route and there has been no CBA evidence put forward to show why – having factored in the costs of amending the VRS and implementing the 120 steps – this diversion would be a good use of public funds.

E41 Paget Road

294. E41 has the highest level of daily use of any of the crossings in this Order. An average day has between 100-150 users, and on Saturday 9 July, during the time of the Wivenhoe Regatta, 314 people used it. It is one of only three north-south pedestrian access points in the densely populated town of Wivenhoe. It is a key connection point for the local community to walk to local shops and services or to visit friends and family around town.

295. In a basic sense, every day around 100 times a person in Wivenhoe will decide to use E41 as opposed to the alternatives of Anglesea Road to the east, or High Street to the west. They must derive a convenience from doing so. All of that will be lost if Network Rail's proposals are confirmed.

²⁰⁴ Mr Lee XIC on E38.

²⁰⁵ Mr Lee XIC on E38.

²⁰⁶ Agreed by Mr Fisk in XX on E38.

²⁰⁷ Agreed by Mr Fisk in XX on E38.

296. Notably, E41 is used for utility walks, being located in the centre of town. As with E05, a five minute detour here really can make all the difference to people choosing whether or not to walk or get into their cars - especially if the detour involves a less attractive route, up steep gradients²⁰⁸ or alongside busy, dangerous roads.²⁰⁹
297. The Ramblers do not consider that the proposed alternative route is an acceptable replacement for a number of reasons.
298. Firstly, Anglesea Road, to the east, requires the need for users to navigate sharp gradients – especially on Queen’s Road – which is combined with loose surfacing. This poses an accessibility constraint, particularly in circumstances where users will need to navigate around traffic. Whilst Ms Tilbrook gave evidence on the advantages of shared space roads, noting that traffic is expected to slow and give way to pedestrians, Anglesea Road has not been designed as a modern shared space, so the Ramblers query the relevance of this evidence.
299. By contrast, both Ms Hobby and Mrs Clarke explained at the Inquiry how users tend to connect E41 to the Folley to the north – a narrow route heading northwards from Queen’s Road. It would seem that users walking this route today avoid the accessibility constraints.
300. Secondly, and perhaps most fundamentally, the proposed diversion on the High Road bridge to the west is not safe. There was considerable agreement among the many objectors to this crossing, including Colchester Borough Council and Wivenhoe Town Council, that it is simply not acceptable for pedestrians to be routed to use this bridge without further information on how the proposed safety mitigation measures would work.
301. Crucially, buses regularly use the turn off to Station Road, which involves a significant sweep of the bus into the bridge space where pedestrian users may be located. Network Rail are proposing to implement footway improvements, but as

²⁰⁸ On Anglesea Road and Queen’s Road to the east.

²⁰⁹ On the High Road bridge.

Ms Hobby explained in her evidence, it was not apparent how they were intending to deal with the obvious lack of space here – how would a pedestrian footway fit?

302. During the Inquiry, much more detail was provided by Ms Tilbrook as to what could be expected on the ground – the give way line would be moved and 1.8m footways, whilst achievable on both sides, would crucially not be possible along the full length of the bridge.²¹⁰ Essentially, Ms Hobby was right – there is not sufficient space for a pedestrian footway on this structure.

303. What is more, Network Rail disclosed a plan that had been developed as part of its feasibility work on this proposal which showed bus turning sweeps. Ms Tilbrook had to accept, on the basis of this plan, that there was no enough space for a bus to turn and a person to walk at the same time. She explained that the proposals were still an improvement to what existed at present and both Ms Tilbrook and Mr Kenning noted that people were already using this road. However, Network Rail is actively proposing to route walkers to this bridge as part of its alternative. The fact that people use the bridge already does not mean it is safe for them to do so.

304. Further, the plan was far from clear. At first Ms Tilbrook agreed it showed south bound buses²¹¹ but she later confirmed it showed buses travelling north.²¹² In any event, it only appeared to show buses turning one way.

305. The further details and this plan has not allayed the Ramblers concerns on safety – far from it. Nor do the Ramblers consider that the RSA's finding of no issues on this route can be relied upon. Having regard to the time the auditing team appears to have spent on site, Ms Tilbrook had to accept there was a chance they could have not seen a bus swinging out onto the bridge.²¹³

306. Clearly there are significant infrastructure constraints here which already cause disruption to traffic in this area. Ms Hobby described a situation where she was in the car behind a bus exiting Station Road. Due to a bus coming in the other

²¹⁰ Ms Tilbrook XIC on E41.

²¹¹ Ms Tilbrook XX by Mr Kay on E41.

²¹² Ms Tilbrook RIX on E41.

²¹³ Ms Tilbrook in response to the Inspector's questions on E41.

direction, the bus in front of Ms Hobby had to reverse.²¹⁴ She further noted that she had been on a bus where it clipped the wall when it turned.²¹⁵ It is easy to imagine how an accident could take place.

307. Thirdly, Network Rail are proposing a new stretch of highway along Philips Road. This may well be a welcome addition to pedestrian access in Wivenhoe, but it certainly does not make the alternative route suitable for users of E41. It provides east-west connectivity, not north-south.

308. For these reasons, the alternative route for E41 is not suitable or convenient. Moreover, Network Rail has failed to demonstrate why E41 needs to be closed in the first place.

E43 High Elm

309. For E43 one of the Ramblers' key concerns is the drastic change in quality and experience between the existing and alternative routes. At present, users approaching E43 from the south are able to easily access the highly attractive woodland walk to the north. As Mr Coe put it, this is a "beautiful walk – in springtime it's gorgeous".²¹⁶

310. Comparing the existing route to the proposed diversion is like comparing chalk and cheese. Mr Coe was clear, the diversion simply "hasn't got the same appeal".²¹⁷ The proposal takes users along the busy B1027, requiring them to cross the road twice.

311. Whilst the woodland path to the north of the level crossing will not be extinguished, clearly the opportunity to do circular walks using E43 will be lost.

312. Again, this is a crossing where there are no known plans to increase train speeds,²¹⁸ and it seems likely that the presence of other level crossings on the line would limit what operational changes Network Rail can do in the future.²¹⁹ In terms of safety

²¹⁴ Ms Hobby XIC on E41.

²¹⁵ Ms Hobby XIC on E41.

²¹⁶ Mr Coe XIC on E43.

²¹⁷ Mr Coe XIC on E43.

²¹⁸ Mr Kenning stated in XX by the Ramblers on E43 that he was "not aware of anything".

²¹⁹ Mr Kenning accepted in XX by the Ramblers on E43 that these crossings may have an impact on what changes Network Rail can do.

risk, the proposals replace one passive crossing on the railway with two passive crossings on the B1027. The proposal to close this level crossing has not been justified.

E45 Great Bentley and E46 Lords No. 1

313. Network Rail are proposing to close not just one level crossing at Great Bentley but two. The result will be that an expanding village that currently has three north-south pedestrian access points across the railway – one to the eastern side, one in the middle and one to the west – will be left with a single crossing point on the eastern side. Network Rail has clearly failed to fully appreciate how its proposals will impact on pedestrian accessibility to the village as a whole.

314. When this point was put to Mr Kenning and Ms Tilbrook, both of them noted that the Irwin development, for up to 150 dwellings to the south of E45 and which requires closure of E45 before 125 of those dwellings can be built, would have factored such considerations into its transport policy and that this development had been granted permission. But that is no answer to the point. The Irwin development would only need to assess its own transport impact on Great Bentley. It also does not appear to have considered the possibility of closing E46 *in addition* to E45.

315. The diversionary route is not a sufficient replacement for the existing options over E45 and E46. Mr Coe vividly explained the particular attraction and value of Great Bentley village green, noting that local Ramblers have a walk that uses the level crossings and goes via the green. Mr Coe explained that around 20 people join and that they join partly because of the village green.

316. Mr Coe also emphasised the importance of the existing routes' "off-road" character. Walkers want to be in the countryside, rather than alongside roads: "we avoid roads at all costs...".²²⁰ On the basis of his local understanding of these crossings and his experience as a walker, he raised concerns about people choosing to use their cars instead of walking as a result of this proposal.²²¹

²²⁰ Mr Coe XIC on E45 and E46.

²²¹ See Mr Coe's proof on E45 at paragraphs 7 and 8.

317. Of course, Mr Coe is not alone in using these parts of the ROW network. The census recorded around 40 people as using E45 and 24 using E46 during the 9-day period. That is just under 65 people altogether. Instead of these off-road walks, these users will need to walk alongside Plough Road, next to the traffic, noise and fumes. Depending on their origin and destination, they may also need to walk a considerable extra length, particularly if they are looking to reach the village green to the north from a south-easterly approach.
318. For these reasons, the alternative route is not suitable and convenient and cannot justify the closure of these crossings (neither of which have had any reported misuse or poor behaviour and both which have compliant sightlines).
319. In addition, the Ramblers fail to understand why the path over E45 could not be routed through Great Bentley train station, across the station bridge. This would be a useful compromise solution to allow for closure of that crossing. According to Mr Kenning, Greater Anglia would not agree to more people walking along the station platform due to safety concerns and it would be difficult to regulate ticket checks if the bridge were used in this way. Neither of these reasons are acceptable, particularly as a number of Network Rail's documentation clearly envisions that diverted users will, in reality, utilise the station bridge.²²²
320. Lastly, the Ramblers note that Mr and Mrs Irwin support Network Rail's case for E45 and that Mr Glegg has provided a statement to the Inquiry on their behalf. This refers to a previous Inspector's decision in appeal ref APP/P1560/W/15/3141016 which granted permission to a development of up to 150 dwellings on the Irwin's land. That development is, however, subject to a Grampian condition limiting build out to up to 25 dwellings unless and until level crossing E45 is closed. In light of this appeal decision – a copy of which the Ramblers submitted to the Inquiry – Mr Glegg made the following statements:
- (i) “The Inspector based his judgement about giving consent on the basis there were reasonable prospects of delivering the closure and on the basis that the diversion of the footpath via the Plough Road automated vehicular and

²²² See p. 136 of Network Rail's statement of case (NR26), Ms Tilbrook's proof at 2.34.10 and the design freeze that refers to the “use of existing road level crossing or adjacent footbridge” (emphasis added).

pedestrian railway crossing, would in safety terms be neutral.” (emphasis added)

- (ii) “Unless substantive evidence can be presented to the Inspector at the [TWAO] Inquiry which demonstrates the detour of footpath E45 to be too onerous, or less safe, in contradiction to the conclusions of the Planning Inspector, then there is a clear benefit of endorsing the closure in meeting the District Councils objective to help deliver the 5-year supply of housing.” (emphasis added)

321. A reading of paragraphs 19-22 of the Planning Inspector’s appeal decision, under the section “rail and pedestrian safety”, makes clear that that Inspector considered there to be two possible ways through which E45 could be closed. Either by way of diversion or through the construction of a footbridge (see the decision at paragraph 19). The Inspector further noted that a memorandum of understanding had been agreed between Network Rail and the appellant in that case in relation to the appellant meeting the costs for that footbridge (paragraph 20) and that “whilst there was lengthy discussion at the Inquiry no substantive evidence was presented to suggest that a footbridge could not be funded from the proceeds of the development as a whole” (paragraph 21). Ultimately, the Inspector concluded, at paragraph 22, as follows:

“Having reached the conclusions above subject to the imposition of a Grampian condition limiting occupation to 25 dwellings the effect of the proposed development on pedestrian and rail safety would be neutral.”

322. It, therefore, follows that this appeal decision only considered that the development would have a neutral safety impact because of the Grampian condition in place. Contrary to Mr Glegg’s statement, the Planning Inspector made no finding as to the safety of any diversion via Plough Road. That issue was a matter falling outside the scope of the Inquiry.

323. Nor is the current proposal, by Network Rail, to close E45 via diversion the only means by which the Grampian condition can be discharged (and the remaining 125 dwellings built). The provision of a footbridge would also allow for this housing benefit, cited to by Mr Glegg, to be realised.

324. Of course, were Network Rail to be successful in closing E45 by way of diversion through this Order, the Irwins would be able to discharge the Grampian condition, thereby realising the full development potential of their site without having to pay the expected £1million - £2million for a footbridge. The Ramblers submit that Mr Glegg's statement must be considered in light of this.

E51 Thornfield Wood and E52 Golden Square

325. The Ramblers object to the proposals for E51 and E52 because the alternative routes will not maintain the east-west connectivity provided by these crossings, nor are they sufficiently safe for walkers. The Ramblers have also noted that it is unclear how exactly the boggy conditions, including a drainage ditch, to the north of existing FP13 (on the east of the railway) will be addressed.²²³

326. Both of these crossings are on the single-track Marks Tey to Sudbury Branch line. It has a line speed of 50mph and there are no concrete plans to increase this, nor to implement any enhancement schemes.²²⁴ The ALCRM scores – of D11 (E51) and D10 (E52) – are some of the lowest in this Order. There is simply no compelling case for why these crossings should be closed, and why they should be closed now.

327. What is more, the Ramblers, in addition to a number of other objectors, including ECC as the highway authority, have shown that user safety will, in fact, be *worsened* through Network Rail's proposals.

328. For E51, Ms Hobby stated that she "wouldn't dream of leading a group"²²⁵ across the road bridge on Janke's Green Road because it simply was not safe enough. There are limited opportunities to step-off the carriageway to avoid oncoming traffic and visibility is compromised.

329. She also explained her concern that users approaching from the south would, in reality, take a short-cut route along Bures Road to the south-west of the crossing, to

²²³ Following a further review of the EIA Screening Report (a document which did not accompany the original application documents) the Ramblers withdrew their concern that no assessment has been undertaken of the hedgerows on the eastern side of the railway that will be affected by the diversion for E51 (expressed in Ms Hobby's proof on E51 at paragraph 9).

²²⁴ Mr Kenning XX by the Ramblers on E51 and E52.

²²⁵ Ms Hobby XIC on E51 and E52.

avoid the lengthy and convoluted nature of the proposed diversion. Bures Road is clearly unsafe for walkers. Whilst Network Rail is not proposing use of Bures Road as part of its alternative route, if the common-sense reality is that users will use it, then the lack of safety here is a relevant issue.

330. For E52, Ms Hobby has concerns over the use of Dowling Road and Fordham road, notably that there is limited passing room for walkers and other road users. For both of these proposals, which rely on stretches of roadside walking, Ms Hobby highlighted the danger in relying on walkers to hear oncoming vehicles, particularly for those users who have hearing loss.

331. Ms Hobby has also queried how the proposed diversion to FP7, on the western side of the railway, is necessary for Network Rail's proposals. She explained that in its present alignment FP7 provides for a reasonably close connection, across Bures Road, from the side road approaching Bures Road from the west. By moving FP7 further north, the proposals would require users approaching eastwards from this side road to walk further along the busy, and unsafe, Bures Road. Movement of this section of footpath is entirely unnecessary for Network Rail's case to close the crossing.

332. In terms of the ROW network, all parties accept that these crossings provide east-west connectivity. Unfortunately, the proposals do not provide a replacement east-west link. Instead, they propose new north-south connections alongside the railway. Mr Kenning argued that when viewed from the wider OS mapping, the proposal does provide an east-west route, albeit that this utilises different parts of the network.²²⁶ However, any such east-west route is far too long and convoluted to act as an appropriate replacement for existing users.

333. It is clear from the objectors' evidence that these are well-used and highly valued connection points. Ms Hobby gave illustrations of how they can fit into longer walks, pointing out some of the local areas of interest and natural beauty. As she explained, the possibilities for how users may walk in the area are endless.²²⁷ She, of

²²⁶ Mr Kenning XX by the Ramblers on E51 and E52.

²²⁷ Ms Hobby XIC on E51 and E52.

course, was highly familiar with the local surrounds, having herself used both crossings as part of group walks on at least half a dozen occasions.²²⁸

334. The loss of such valued ROWs for little, if any, tangible gain cannot be justified.

E54 Bures

335. The alternative route for E54 (which, in reality, is a simple extinguishment as opposed to a “diversion”) cannot justify the closure of this level crossing because it is unsafe.

336. Users are directed to cross the road under the underbridge on Station Hill where visibility for pedestrians is severely restricted. With respect, it was not apparent why Ms Tilbrook considered that visibility was sufficient. She, again, referenced the highway code stopping sight distances which, for the reasons given on E29, is not acceptable.

337. Ms Tilbrook also emphasised that when a person has reached about halfway into the carriageway itself they can achieve the visibility required by Manual for Streets. Of course, this is too late. It is clear that the Manual for Streets visibility standards could not be achieved at the location where a pedestrian needs to make the decision to start crossing the road and Ms Tilbrook even accepted that in some locations to the western side of the bridge (on the south side of the road) it is not possible to achieve even the highway code visibility.

338. Mr Russell’s evidence for this crossing could not be clearer: it is impossible to cross this stretch of road safely.²²⁹ He provided a visibility envelope showing an area with a blue line where visibility is needed.²³⁰ It can be seen that this line is crossed over by dotted and solid lines representing the edge of the carriageway. As the road curves around, it is simply not possible for pedestrians to see oncoming traffic from all necessary angles.

²²⁸ Ms Hobby’s proofs on E51 and E52 at paragraph 1. For E52, Ms Hobby has used the crossing on at least twelve occasions.

²²⁹ In response to the point put to him in XX that people are using this stretch of road so its not impossible to cross it.

²³⁰ See Appendix to Mr Russell’s Visibility Technical Note.

339. The Ramblers were provided, yesterday, with a copy of Mott MacDonald’s note in response on these points.²³¹ The Ramblers’ position has not changed as a result. The plan included in this note shows that a car driver approaching from the east cannot see a pedestrian to the west of the bridge waiting to cross south to north until the pedestrian is standing in the carriageway.
340. On design standards Mr Russell was adamant that “the guidance on Manual for Streets is the industry standards for designing safe roads”.²³² It is, itself, a relaxation of the stopping sight distances required in DMRB, which are even more onerous. The highway code distances are never used in designing a highway – because they rely on a driver reacting instantaneously.²³³
341. Network Rail has provided no specific detail as to where the crossing point will be located. What is more, Network Rail has not demonstrated who exactly owns the land over which it will be necessary to provide the suggested footway to the north of Station Road. As Mr Russell explained that there is a risk – depending on the boundary of third party land – that there will be insufficient space for the footway and/or a ransom strip could be created. In these circumstances, Mr Russell emphasised the need to look very closely at who is maintaining this area.
342. E54 is one of two east-west connection points for pedestrians across the railway in Bures (the other being the aforementioned use of the Station Hill underpass). Mr Evans explained how E54 serves to connect users to a number of community facilities in and around the village and that it is used by the Suffolk Ramblers for a quarterly organised walk. What is more, as the village grows this point of access will become more, not less, valued.
343. Network Rail has simply failed to justify the need to close this access point. The line is single-track operating a “one train working” system at a maximum line speed of 50mph (with no current plans to increase this²³⁴). Sightlines are well over the minimum and the ALCRM score of D8 is low.

²³¹ NR-174 Mott MacDonald Technical Note regarding Visibility on Station Hill, Bures and Childerditch Lane.

²³² Mr Russell XIC on E54.

²³³ Mr Russell XIC on E54.

²³⁴ Mr Fisk XX on E54.

E56 Abbotts

344. E56 has a very particular history. It has been closed since 2006 – over a decade – by way of “temporary” closure orders. Mr Coe has, on behalf of the Ramblers, persisted in seeking to re-open this ROW. He submitted to the Inquiry two letters to demonstrate these efforts: (i) the first is dated 29 October 2012, from the Minister for Rail to MP Douglas Cardwell, and notes that Network Rail “has now made a firm commitment to Essex County Council that it will not apply for any further temporary closures; and is aiming to approve for use and then install a warning lights system, known as Wave Train, at Abbotts level crossing before March 2013”; (ii) the second is dated the end of April/beginning of March 2013, between the same parties, noting that MSL would be installed in November 2013 and recording that Network Rail “expressed their apologies for the inconvenience” of the delay in doing so.
345. Mr Kenning did not dispute the history of events put forward by Mr Coe. He explained that Network Rail had initially installed whistle boards in 2005 at the crossing, but following a threatened noise abatement notice from the council, these were removed in 2006. He could not speak to the 6-year period between 2006-2012, but noted that in 2012 E56 was chosen as a test site for new MSL technology. This was installed in its entirety but failed to work to an acceptable standard.
346. It is simply unacceptable that a public ROW has been closed for so many years without any TTRO in place. That is an unlawful obstruction of a highway. Network Rail could not avoid that fact. If safety really is an issue at this crossing, then Network Rail should have sought a closure order under the specific provisions of the HA 1980.
347. In this context, it is crucial that the importance of this ROW is not overlooked due to the fact it has been impossible to access it for so long. Indeed, Mr Coe’s evidence was that this crossing provided an important connection point leading to many onward footpaths (Mr Coe’s proof at paragraphs 9-10). That people were trespassing onto the railway at the location of E56, even when the crossing was closed, strongly indicates the value of this access point to the community.

348. For would-be users of E56, the alternative route is not a suitable and convenient replacement. It is too long and convoluted and requires users to walk over a narrow rail bridge to the north-east of the crossing. Mr Coe expressed concerns over the safety of this road bridge and, in particular as to how groups of walkers would navigate this section.
349. It is not clear from the design freeze exactly where users would enter Little Bromley Road. Nor is it clear whether the RSA auditors assessed the safety of this access point.²³⁵
350. Finally, it is worth reiterating that whilst Mr Kenning gave a significant amount of technical evidence on the signalling complications of this site, as well as reasons why it may be more expensive to build a bridge here, Network Rail is not seeking to justify its proposal to close this crossing on the basis that other mitigation measures, or grade-separated solutions, are not feasible, but rather it is simply alleging that E56 can be closed because a suitable alternative has been found. This technical evidence is therefore irrelevant for purposes of this Inquiry.

HA3 Manor Farm and HA4 Eve's

351. The proposals to close HA3 and HA4 both rely on a diversion that routes users over the Ockendon Road bridge. This bridge is not safe for pedestrian use.
352. Ockendon Road is a fast-moving, highly-trafficked road. The bridge is clearly narrow and hump-backed meaning that visibility for vehicles is severely restricted. Network Rail's proposals provide no details, on the design freezes or in the design guide description (p. 65 of NR12²³⁶), as to how users will cross this bridge. It only

²³⁵ The November 2016 RSA appears to have audited the Orange Route and the Blue Route (pp. 17-18) and highlighted, for the blue route, a need to provide a crossing point at the junction with Harwich Road. However, no comments were made on the green route, which more closely accords with the current proposals to the north-east of the crossing. It is unclear if the auditors consider there to be any issues with users being brought out, from the field edge, onto Little Bromley Road.

²³⁶ Which simply states: "...Users will continue over Pea Lane onto a new 2m wide unsurfaced footpath. This new footpath will be within a field margin, outside of Network Rail land to the east of Pea Lane and then heading north and east before crossing the railway at the existing road bridge on Ockendon Lane. To the east of the railway, users will be diverted east onto a new 2m wide unsurfaced footpath outside of Network Rail land before using the existing footway on Ockendon Lane to re-join FP231 heading south to connect to existing footpath FP253." (Emphasis added.)

became apparent during the Inquiry itself that Network Rail intended to install steps to surmount the embankments between the proposed new field-edge footpaths (on approach to the bridge) and the bridge itself, and that it planned to position these steps so that users would be “brought out onto” the bridge at some point along its crest. Ms Tilbrook explained, during examination-in-chief, that visibility would be better at the point at which pedestrians would arrive onto the bridge, and it seemed Network Rail relied on this fact to show that the bridge would be safe enough to use.

353. If that is Network Rail proposal, then there is absolutely nothing in the documentation to enable the Inspector, or interested parties, to assess it. The design freeze does not even mention the need for steps²³⁷ and no diagrams, or visibility splays, have been put forward. Mr Russell explained that, in terms of visibility assessments, he would expect to have a topographical survey and plotting of visibility before the detailed design stages.²³⁸ Bearing in mind that both objectors, such as the Ramblers, *and* the RSA auditing team raised concerns over the safety of this bridge, it is baffling that Network Rail has not put forward this type of evidence to support its claim that visibility will be adequate for use. Clearly, the Inspector cannot be satisfied from the information before him that the proposal will be safe.

354. Notably, Mr Russell himself was not prepared to walk over this bridge when on site because he did not consider it safe enough, notwithstanding that, in his words, he is “pretty thick-skinned” and is used to walking on busy lanes.²³⁹ He was, therefore, unable to measure, or accurately estimate, the width of the road, but in response to the Inspector’s questions he confirmed that once a pedestrian commences walking on this bridge they are committed to continue in order to reach the other side - this is a particular concern.²⁴⁰

355. Mr Bird, likewise, gave first-hand evidence of his experience assessing the bridge, explaining that he climbed the embankment to reach the parapet but did not step onto the road because of safety concerns due to the volume of traffic.²⁴¹

²³⁷ And Ms Tilbrook was unable to provide further specifics of the numbers involved, although she stated that it was not in “E38 territory”.

²³⁸ Mr Russell XIC on HA3 and HA4.

²³⁹ Mr Russell RIX on HA3 and HA4.

²⁴⁰ Mr Russell XIC and response to Inspector’s questions on HA3 and HA4.

²⁴¹ Mr Bird XIC on HA3 and HA4.

356. On visibility, Ms Tilbrook explained that whilst there was 15m of limited visibility on the bridge, the highway code stopping sight distances could still be achieved. For the reasons given above, in relation to E29 and E54, it is not acceptable to rely on drivers making an emergency stop to show that a route is safe, especially in circumstances where those drivers are unlikely to expect²⁴² to see pedestrians popping out at the crest of a narrow hump-back bridge.

357. In addition to being unsafe, the alternative is too long. The Ramblers estimate it would take 40 minutes one-way for HA4. Even if Ms Tilbrook's calculation of 25 minutes one-way is used, it is unclear why Ms Tilbrook considers that an extra 25 minutes to a walking route will not put people off using this connection point.

358. The route over HA4 is being used today. Mr Bird highlighted its links to the pretty St Mary Magdalene Church in North Ockendon and stretches of open countryside. According to Mr Bird, the Ramblers use this path on regular occasions, leading walks around 3 or 4 times a year.²⁴³ Should Network Rail's proposal be authorised, this ROW connection will be lost to the community because realistically people would not (and, indeed, should not, on safety grounds) use the alternative route.

H05 Pattens

359. The diversionary route for H05 is not suitable due to its added length and convoluted nature, combined with the serious risk of flooding along the route and in and around the underpass. What is more, the Ramblers are concerned that the height of the underpass will be restricted if/when the existing drainage problems are dealt with.

360. In terms of the impact of flooding on use of the route, Mr Glass, appearing on behalf of the Ramblers, had a nuanced position. The area around the diversion can become boggy and waterlogged. The current route across H05 is on a raised level, which enables users to assess whether flooding is preventing accessibility ahead of them. They can then decide whether to proceed. By contrast, due to the proposed

²⁴² Whilst Ms Tilbrook noted in RIX that it would be possible to have additional signage to warn cars of pedestrians in the road, there is absolutely nothing in the Order plans to require this. Mr Russell also explained that drivers are likely to be more concerned with approaching vehicles in the road, bearing in mind that signage is already in place to warn of approaching traffic.

²⁴³ Mr Bird XIC on HA3 and HA4.

diversion's convoluted nature, users cannot easily see how the route will develop in front of them. This will deter them from advancing along the route. Mr Glass also raised concerns that the underpass is a bottleneck and there could be flash floods in heavy rains.²⁴⁴

361. It was put to Mr Glass, during cross-examination, that Network Rail had considered the risk of flooding – including for each individual crossing proposal – through the work underlying its environmental impact assessment (“EIA”) screening request.²⁴⁵ Of course, this assessment of flood risks is entirely irrelevant for purposes of Mr Glass' evidence and the Ramblers' objection to this crossing. The EIA screening assessment considers whether the proposed development will have “likely significant effects” on the environment. Mr Glass is not concerned about “significant” flood effects from the closure of H05. His concerns are about *existing* flood risks in the area of the proposed diversion and how this affects that diversion's suitability for walkers.

362. What is more, the Ramblers remain uncertain as to what changes Network Rail will make to the underpass, in order to address the drainage issues. The diagram on p. 45 of the design guide (NR12) is far from clear (particularly on the thickness of the mesh) and, in any event, is illustrative only. Details are required here because the extent of these changes will affect the height of the underpass and, put bluntly, that will affect how many people will need to duck to use this route. Mr Kenning considered the resulting height to be 6'4, but Ms Tilbrook seemed to conclude 6'2.

363. Mr Glass produced his own calculations²⁴⁶ based on his estimates of the work involved (including the need to fit in a mesh) and the path depth – noting that without further details he had to make assumptions. He estimated that the resulting headroom would only be 1.775m (5'10) – 1.825m (6'') – which clearly would not be suitable nor convenient.²⁴⁷ He also raised concerns that when trains travel over the underpass the track appears to flex vertically, leading him to question further how exactly the mesh would be fixed to the underpass and whether it could fracture over time.

²⁴⁴ Mr Glass XIC on H05.

²⁴⁵ See NR11 for the Screening Decision Letter.

²⁴⁶ See Note on calculations made of dimensions of underpass A05/A06. This is in the form of an e-mail sent by Mr Glass on 18 October 2018.

²⁴⁷ Mr Glass XIC on H05.

364. Finally, it remains entirely unclear, from the evidence before the Inquiry, whether a solution could be found at detailed design stage that would satisfy Hertfordshire County Council.²⁴⁸

T01 – 131

365. In reality, Network Rail’s proposals for T01 are for an extinguishment of the relevant ROW, not a diversion. Whilst Network Rail is proposing to divert FP145 to the east of the A1306, this is simply a “nice to have” add-on – designed to address flood concerns on the existing route. It does not provide any new “alternative route”. Mr Kenning accepted, during cross-examination, that the “diversion” for this crossing is really just the route highlighted in orange on the design freeze. The entirety of this route is available for use today.

366. Seen from this perspective, Network Rail’s justification for closing this level crossing rests entirely on the generic issues associated with level crossings on the rail network as a whole which is clearly insufficient. What is more, it is apparent that HS1 (running parallel to the stretch of railway line that T01 traverses) has specifically catered for the pedestrian access point at T01 by providing an underpass.²⁴⁹ It would be counter-intuitive, in a setting where NMU access has been catered for by surrounding infrastructure, to break-up the ROW network.

367. For those who currently use the crossing, the proposed “alternative route” is clearly not an acceptable replacement. Mr Bird is familiar with the area, having visited it on several occasions last year.²⁵⁰ His evidence highlighted the issues surrounding the quality, and experience, of walking the alternative – users will be required to walk alongside a busy, urban road, subjecting themselves to traffic, noise and fumes. He stated that he had walked the section of the route along the A1306 on several occasions “and every time – lorries tower above you – it is quite intimidating – people throw

²⁴⁸ It goes without saying that if no such solution can be found then all time spent on this proposal at the Inquiry (and in preparations for it) will have been a waste.

²⁴⁹ Whilst Mr Kenning expressed doubts that this provision of NMU access was intentional, he ultimately had to accept that he had not been involved in the HS1 project so he could not speak with any authority on the issue.

²⁵⁰ Mr Bird XIC on T01.

rubbish – it is seedy to say the least...and intimidating for the general public to walk along”.²⁵¹ He used the word “miserable” to describe it.²⁵²

368. Ms Tilbrook noted that both the alternative and existing routes have an “urban feel” about them, but Mr Bird contrasted the existing route: noting that it is “actually a very quiet secluded path” and that it is “surprising how countrified it feels”, including the stretch alongside the industrial site.²⁵³

369. Having regard to the additional length on the alternative – which the Ramblers estimate as requiring an extra 15 minutes one-way (including time needed to cross the A1306) – and the change in quality, the Ramblers have serious concerns that users will be put off from walking altogether and use their cars instead to reach destinations such as Aveley.²⁵⁴ This contradicts the Government’s aims of encouraging walking.

370. T01 is a valued pedestrian access point across the railway, used by the Thurrock Ramblers.²⁵⁵ It provides a direct and easy link between *inter alia* the Rainham marshes and Aveley, part of one of the few crossing points over rail and road infrastructure in this area. There are a limited number of footpaths in this area.²⁵⁶ Network Rail has not justified the need to lose this one.

T04 Jeffries

371. The alternative route for T04 is not suitable due to its length, quality and the significant number of steps on either side of the Manor Way road bridge.

372. It was agreed between the parties that users of T04, approaching from the south, are likely to be continuing north until they reach the A13 at which point they will turn right to walk along a path alongside the A13 (which is not marked on the DMS). Ms Tilbrook agreed in cross-examination that the crossing may be being used for “there and back” routes. The crossing sits in close proximity to a settlement located on the

²⁵¹ Mr Bird XIC on T01.

²⁵² Mr Bird XIC on T01.

²⁵³ Mr Bird XIC on T01.

²⁵⁴ As Mr Bird states in his proof on T01 at paragraph 12, “[i]n my experience people will not walk this route except when they have no choice. People will be encouraged to use their vehicles”.

²⁵⁵ Mr Bird confirmed that the Thurrock Ramblers use this path during XIC on T01.

²⁵⁶ Mr Bird XIC on T01.

eastern side of the railway and Ms Tilbrook accepted that for any users heading from the northern part of this settlement, the impact of the diversion would be greatest.

373. The Ramblers estimate that to walk the diversion alone would take 25 minutes. For a “there and back” route, this would be an additional 50 minutes to the current walk. That is clearly an unacceptable detour. But, what is more, it became apparent during the Inquiry that an estimated 76 steps will also need to be climbed and descended. This will clearly impose constraints on any users with mobility impairments. As with E38, there is no legal guarantee that these steps will be built in accordance with inclusive mobility requirements and the specific details are lacking. In any event, Mr Bird highlighted a concern that wooden steps – as shown on the design freeze – can become slippery if wet. There is no guarantee that the steps would not be wooden.

374. Finally, Mr Bird, who is familiar with the crossing,²⁵⁷ had himself gone up onto Manor Way and walked along it, in order to experience it. He emphasised the off-putting nature of that part of the diversion, noting that there was a lot of noise and volume of traffic which he would find off-putting.²⁵⁸

375. For these reasons, the Ramblers do not consider that the alternative route is suitable and convenient.

376. What is more, Network Rail has invested between £150,000 - £300,000²⁵⁹ to install overlay MSL at the crossing. According to Mr Fisk, the expected lifespan of this technology is around 15-20 years, meaning that if MSL was installed in 2014 at this crossing, it could last until 2034. Mr Kenning accepted that no evidence had been put forward to show that T04 has had any safety incidents or adverse operational efficiency impacts. On the information before the Inquiry, the Ramblers do not consider that this crossing needs to be closed.

T05 Howells Farm

377. The alternative route proposed for T05 consists of both an eastern and a western limb, neither of which is suitable. On the eastern side, the alternative route is not safe

²⁵⁷ Mr Bird noted during evidence that he had visited the crossing three times and was familiar with it.

²⁵⁸ Mr Bird XIC on T05.

²⁵⁹ Mr Fisk XX by the Ramblers on T05.

enough to use and on the western side it is too inaccessible due to the need for considerable amounts of steps.

378. On safety, Mr Russell raised two key safety concerns: that there was insufficient footway (i) along the B1420 to the north of the railway²⁶⁰ and (ii) on the High Road in the vicinity of Fobbing level crossing. He made simple recommendations that footways be provided in these locations or that – for the B1420 – Network Rail provide a financial contribution to the Highway Authority to undertake regular verge maintenance. The RSA flagged the same two issues.²⁶¹ Clearly these safety concerns must be addressed.

379. However, Network Rail argued, somewhat bizarrely, that it did not need to address them, primarily because it does not think that users will, in reality, use this part of its suggested alternative. Ms Tilbrook explained that the entirety of the alternative route was simply included in the design freeze in order to show how people could connect back to the other side of the level crossing - in reality she considered it very unlikely anybody will want to come back through this part of the eastern diversion.

380. As with E28, it is impossible for her to reach these conclusions without further information on users' origins and destinations. Mr Bird, for example, highlighted that some users may arrive in the area by bus onto the B1420, with bus routes connecting to the centre of Basildon (around 10 minutes away).

381. Nor is it acceptable for Ms Tilbrook to rely on the fact that people may be using these stretches of roadside walking already. Firstly, the fact that they may be doing so does not mean that these are safe locations to actively encourage people to use. Secondly, it is possible that users are currently avoiding the unsafe area near to Fobbing level crossing by using T05 itself.

382. Overall, Network Rail is putting forward an alternative route for users of T05 to use when the crossing is closed and that alternative route must be safe in its entirety. In failing to provide the necessary footways, Network Rail cannot assure the Inspector that this basic standard will be met. For this reason alone the alternative is unsuitable.

²⁶⁰ Mr Russell explained that he considered the lack of footway on the B1420 to be an issue both on the eastern and western sides of the location of the level crossing.

²⁶¹ And Thurrock Borough Council have also stated in their letter of objection, that they would like to see improvements of the B1420.

383. On the western diversion, the route will require users to surmount a number of steps. Ms Tilbrook suggested there would need to be around two flights of 9 steps to connect the new path to Southend Road.²⁶² This severely restricts accessibility on the route, particularly for any users with mobility issues.

384. In addition, these steps will bring users straight out onto Southend Road and the hump back bridge. Mr Bird explained, that there is a narrow footway here, use of which he considered to be a safety risk.²⁶³ From a user perspective, he said he thought this part of the route was intimidating.

385. T05 is a valuable connection point – enabling walkers to get to Fobbing Marshes, Corringham Marshes and nature reserves. The proposed alternative route is clearly unsuitable, for the reasons given above, and, in any event, Network Rail has not shown any specific reason why this level crossing needs to be closed.

SECTION 6: CONCLUSION

386. The Ramblers are not against improvements to the railway. They are certainly not against improvements to safety on the railway network. Nor are they against changes being made to the ROW network *per se* - indeed they have not objected to a number of the crossing proposals in this Order. What they object to are proposals that will have a detrimental effect on ROWs and on the public's enjoyment of them. And they certainly object to any proposals that will increase safety risks for users by routing them onto roads.

387. Ultimately, of the 58 proposals put forward by Network Rail, the Ramblers have felt it necessary to object to 30. That is over half. This is a strong indicator to the Ramblers that there are serious flaws with how this project has been carried out. Unfortunately, the evidence heard at the Inquiry has not allayed these wider concerns.

388. To conclude, the Ramblers take this opportunity to pose a series of questions for the Inspector to consider:

²⁶² Ms Tilbrook XIC on T05.

²⁶³ Mr Bird XIC on T05.

- (1) From the evidence put forward, has Network Rail really demonstrated what the tangible benefits of this Order – both for Network Rail and the public - would be?
- (2) Has Network Rail demonstrated how the closure of the particular level crossings included in this Order (and the ROWs that traverse them) will, in reality, help to achieve the three strategic benefits underlying its strategic case?
- (3) Has Network Rail robustly shown that users of the level crossings will, in reality, be safer as a result of the diversions?
- (4) Does the Inspector truly have confidence that Network Rail have sufficiently assessed, for each of the individual proposals, what the impact on users will be if the diversions are implemented?
- (5) Does the Inspector have sufficient information to enable him to be satisfied that suitable diversions for the crossings both can be and will be delivered?
- (6) Most importantly, the Inspector has experienced this Inquiry first-hand. It is an Inquiry that has lasted almost a year and a half, requiring 12 weeks of sitting days. There has been significant documentation to be grappled with, concerning an overwhelming number of proposals.

The ROW network is a precious resource in this country. It needs to be protected and managed carefully so as to ensure its continued enjoyment and use by the public in generations to come.

The Inspector is asked to consider, in light of everything he has seen during this Inquiry, whether the use of a TWAO truly is an appropriate way by which to close and divert so many ROWs. If this is a test case, is the Inspector comfortable knowing that this approach could be applied elsewhere in the country and on a greater scale?

MERROW GOLDEN

7 FEBRUARY 2019

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